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NOTES OF RECENT CASES.

Wallace, J.
21st April, 1927. } C. R. P. No. 1336 of 1925.

Civil Procedure Code, S. 115 and O. 38, R. 8—Attachment before judgment—Claim preferred—Claim decided adversely to claimant without decision as to question of possession—Interference in revision.

Where certain properties were attached before judgment and claim was preferred to those properties and where the claim was decided adversely to claimant without the question of possession of properties being gone into :

Held, in revision, that the order of the Lower Court must be set aside and the case sent back for disposal on the question of possession as that was the question to be decided in such a case.

E. Krishnamurthi for Petitioner.

A. C. Sampath Aiyangar for Respondent.

N. S.

Odgers & Venkatasubba Rao, JJ.
25th April, 1927. } C. M. A. No. 382 of 1924.

Hindu Law—Father—Debtor—Decree against son—Son if could be adjudicated an insolvent.

A son of a Hindu father cannot be adjudicated an insolvent in respect of his father's debts with regard to which a decree is obtained against him on the basis of the operation of pious obligation. 41 M 824 followed. 49 M. 217 distinguished.

A. Viswanatha Aiyar for Appellant.

Watrap Subramania Aiyar for Respondent.

N. S.

N. R. C.

The Chief Justice, Beasley & Wallace, JJ. *27th April, 1927.* } Referred Case No. 2 of 1926.

Income-tax Act, S. 2 (1)—Agricultural income—Income of a lessee of land used exclusively for the manufacture of salt from sea water.

The manufacture of salt from sea water cannot be said to be income from land and it is not agricultural income exempt from assessment.

T. V. Venkatarama Aiyar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Wallace, J. *28th April, 1927.* } C. R. P. No. 113 of 1926.

Railways Act, S. 72—Risk Note Form B—Goods lost during transit—Liability of Railway Company—Burden of proof.

Where certain goods entrusted to a Railway Company under the new Risk Note Form B for loss during transit the *onus* is on the consignor to prove that the loss was due to negligence or misconduct of the Railway servants or the authorities. The new risk note has not made any change in this respect.

Vere Mockett for Petitioner.

S. Rangasami Aiyangar for Respondent.

N. S.

Devadoss and Madhavan Nair, JJ. *29th April, 1927.* } C. M. S. A. No. 132 of 1925.

Civil Procedure Code, S. 47 & O. 21, R. 58—Decree against karnavan—Attachment of properties alleged to belong to tarwad—Claim by a member of tavazhi—If falls within S. 47.

Where a decree was passed against a karnavan in his capacity as karnavan and some properties were attached by the decree-holder as belonging to the karnavan and a claim was preferred by some of the members of the tarwad that the property attached belonged to their tavazhi, the question whether the claim fell under S. 47 or under O. 21, R. 58 though the petition was filed under both the sections was referred to a Full Bench.

K. Krishna Menon, Counsel for Appellant.

K. P. Ramakrishna Aiyar for Respondent.

N. S.

Waller, Madhavan Nair and Jackson, JJ. *29th April, 1927.* } Cr. R. C. No. 753 of 1926.

Criminal Procedure Code, Ss. 517 and 520—Appeal—Forum.

The words " Court of appeal " in S. 520 of the Cr. P. C. refers only to the Court hearing appeals ordinarily under the provisions of the Code and not to a Court invested with appellate powers by virtue of

delegation. An appeal against the order of a Sub-Magistrate passed under S. 517 lies to the District Magistrate and not to the Sub-Divisional Magistrate who has by virtue of delegation jurisdiction to hear appeals from Sub-Magistrates.

K. Desikachariar for Petitioner.

K. S. Jayarama Aiyar for Respondent.

The Public Prosecutor for the Crown.

N. S.

Devadoss & Jackson, JJ.
2nd May, 1927. } S. A. No. 1324 of 1924.

Hindu Law—Re-union—Persons who were not parties for original partition.

Under Hindu Law there can be a re-union only among members who were parties to the original partition. 30 C. 725, 33 C. 374 and 35 C. 71 referred to.

G. Lakshmanna for Appellant.

S. *Varadachariar* for Respondent.

N. S.

Odgers & Curgenven, JJ.
3rd May, 1927. } C. M. A. No. 141 of 1923.

Civil Procedure Code, S. 47 and O. 21, R. 16—Death of assignee decree-holder—Jurisdiction of executing court to enquire whether the assignee was a benamidar.

The executing court has got jurisdiction to enquire on the death of the assignee decree-holder whether the assignee was a benamidar for a third party.

C. S. Venkatachariar for Appellant.

S. *Varadachariar* for Respondent.

N. S.

Odgers & Curgenven, JJ.
3rd May, 1927. } C. M. A. No. 395 of 1926.

Hindu Law—Joint trading family—Insolvency of manager—Powers of the manager if vest in the Official Receiver.

The following question was referred to their Lordships to the opinion of a third Judge under S. 98, Civil Procedure Code :

Where the manager of a joint Hindu trading family is adjudicated an insolvent his powers of alienating the family properties vest in the Official Receiver.

B. Somayya for Appellant.

V. S. Narasimhachariar for Respondent.

N. S.

Devadoss & Jackson, JJ.
4th May, 1927. } S. A. No. 957 of 1924.

Hindu Law—Minor—Sale by de facto *guardian for discharging binding debt.*

Where the property of a Hindu minor was sold by his father's cousin who was the nearest male agnate for the purpose of discharging a mortgage debt of the minor's father:

Held, that the sale was not voidable by the minor on attaining majority on the ground that the father's cousin was only a *de facto* guardian.

C. S. Venkatachariar for Appellant.

N. Sivaramakrishna Aiyar for Respondent.

N. S.

The Chief Justice and Wallace, J. *4th May, 1927.* — O. S. A. No. 51 of 1926.

Letters Patent (Madras), cl. 15—Judgment—Order refusing to revoke leave to sue.

An order refusing to revoke leave to sue on the Original Side is not a judgment and no appeal lies under clause 15. 35 M. 1 followed.

S. Srinivasa Aiyangar, V. Radhakrishnayya, A. Krishnaswami Aiyar, P. Kameswara Rao and *S. Venkatesa Aiyangar* for Appellant.

C. Rama Rao and *V. C. Gopalaratnam* for Respondent.

N. S.

The Chief Justice, Beasley and Wallace, JJ. *4th May, 1927.* — R. C. No. 8 of 1926.

Income-tax Act, Ss. 4, 6, 10 and 13—Money-lending business—Foreign advances—Accrued interest—Liability for assessment.

Where an assessee adopts the mercantile system for the purposes of his business, he cannot go back upon the system and ask that he should be assessed on the cash basis. Where an assessee was doing money-lending business at Rangoon and had a Branch at Penang and his account books showed that a certain sum was entered in the Rangoon Accounts as an advance made to the Penang firm and there was also of a credit entry as interest due in respect of this advance

Held, that the sum of interest was assessable under S. 4, cl. (1) of the Act.

K. S. Krishnasami Aiyangar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

The Chief Justice, Beasley and Srinivasa Aiyangar, JJ. *5th May, 1927.* — R. C. No. 20 of 1926.

Income-tax Act, Ss. 33 and 34—Scope and applicability.

Where the Commissioner of Income-tax attempts to initiate re-assessment proceedings afresh acting under S. 33, he is bound by the one year's limitation period specified in S. 34. The Commissioner's powers under S. 33 are not untrammelled by any time-limit. But there is no time-limit for the Commissioner to revise the assessment proceedings of the Income-tax Officer or Assistant Commissioner.

Vere Mockett for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Waller & Madhavan Nair, JJ. *6th May, 1927.* } C. M. S. A. No. 47 of 1925.

Civil Procedure Code, O. 34, Rr. 4 and 6—Mortgage decree—Construction—Decree in terms of compromise—If preliminary or final decree—Limitation Act, Art. 182, cl. (5)—Application for final decree if can be a step-in-aid of execution.

In a suit on a mortgage the matter was compromised and a decree was passed in terms of the compromise as follows :—

(1) Upon the 1st defendant paying to the plaintiff or into Court on or before the 30th April, 1916 the sum of Rs. 250 with interest thereon at the rate of 12 per cent. per annum from this date to the date of payment the plaintiff do deliver to the 1st defendant or to such person as he may appoint in this behalf all documents in his possession or power relating to the properties.

(2) That in default of payment of the sums aforesaid on or before the date specified the rights of the 1st defendant over the said properties or a sufficient portion thereof be sold.

(3) That if the net proceeds of sale be found insufficient to pay the sums aforesaid in full the 1st defendant do personally pay the amount of the balance to the plaintiff.

The question arose whether this is a preliminary decree and if so whether it should be followed by a final decree and secondly whether the three applications for final decree which were dismissed for default could be construed as steps-in-aid of execution under Art. 182, cl. (5) of the Limitation Act.

Held, the decree was a compromise decree in pursuance of the terms of the compromise and does not require a final decree.

34 Cal. 886 and 44 All. 666 followed.

Held also that the subsequent applications for final decree could be treated as steps-in-aid of execution as the applications were made to enable the decree-holder to realise the fruits of his decree.

K. P. Krishna Menon for Appellant.

K. P. Ramakrishna Aiyar for Respondent.

N. S.

Ramesam & Cornish, JJ. *18th July, 1927.* } S. A. No. 1910 of 1926.

Madras District Municipalities Act, S. 9—Election held under the preceding section—Meaning of—If includes an election contemplated to be held.

The words " Election held under the preceding sections " in S. 9 of the Madras District Municipalities Act do not include an election contemplated to be held but not in fact held.

Dr. Swaminathan and *K. Desikachari* for Appellant.

T.M. Krishnaswami Aiyar and *Sankara Menon* for Respondent.

N. S.

N. R. C,

Wallace, J.
20th July, 1927. — Cr. Rev. Case No. 86 of 1927.

Penal Code, S. 79—Judgment-debtor returning from Court—Arrest by process-server—Legality.

A judgment-debtor who was returning from Court whither he had been on Court business was arrested by process-server.

Held, that the process-server was guilty of wrongful arrest.

M. Krishna Bharathi for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Wallace, J.
20th July, 1927. — Cr. Rev. Case No. 76 of 1927.

Criminal Procedure Code, Ss. 106 and 123—Order for security for good behaviour and sentence of imprisonment in case security is not furnished—Legality.

A Court has no power to pass an order for security for good behaviour and sentence of imprisonment in case security is not furnished. The order for imprisonment must be passed only after the expiry of the time fixed for furnishing security, if security is not furnished by that time.

A. V. Narayanaswami Aiyar for *C. S. Swaminathan* for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Srinivasa Aiyangar & Reilly, JJ.
21st July, 1927. — S. A. No. 1172 of 1924.

Pensions Act—Rules framed by the Board of Revenue—R. 4—Collector's certificate—Effect of—Fresh cause of action.

The Collector's certificate does not give a new cause of action in the case of malikana pension but only removes an impediment in the way of filing a suit in respect of political pensions which is otherwise prohibited under the Pensions Act.

Per Srinivasa Aiyangar, J. (Reilly, J. contra).—The Collector's certificate issued under R. 4 of the rules framed under the Board of Revenue can only be in respect of land revenue and will not cover the case of malikana pension.

K. P. M. Menon and *P. Govinda Menon* for Appellant.

A. Krishnaswami Aiyar and *D. A. Krishna Wariar* for Respondent.

N. S.

Madhavan Nair & Curgenven, JJ.
21st July, 1927. — C. R. P. No. 1156 of 1925.

Madras District Municipalities Act, S. 93 (3)—Transfer of Officer from one Municipality to another—Demand of profession tax by both Municipalities—Legality.

A Government Officer residing within one Municipality was transferred to another place during the same year. The Municipality of the place where he was transferred sent a demand notice for profession tax and the same was paid. The other Municipality also served a demand notice for profession tax.

Held, that he was not bound to pay the tax under S. 93 (3).

T. S. Nataraja Pillai for Petitioner.

S. R. Dikshit for Respondent.

N. S.

Srinivasa Aiyangar & Reilly, JJ.
22nd July, 1927. } S. A. No. 227 of 1925.

Limitation Act, Art. 47—Scope of—Criminal Procedure Code, S. 146—Order under—If falls within Art. 47.

An order under S. 146 of the Cr. P. Code was passed by a Magistrate delivering possession of the properties to a Receiver. Subsequently the defendants in the present suit obtained a decree from the Civil Court declaring their title to the properties. On the strength of this decree they got possession of the properties from the Magistrate. Subsequently this Civil Court decree was upset in Second Appeal wherein the High Court held that the present plaintiffs were entitled to the properties. The plaintiffs thereupon brought the present suit to recover possession of the properties from the defendants.

Held, (1) that Art. 47 of the Limitation Act was not applicable to the suit and the suit was not barred though it was brought more than three years from the date of the Magistrate's order giving possession to the defendants, as the order was not passed in the interests of peace under the Cr. P. Code, but was passed only in accordance with the declaration of the defendants' right by the Civil Court; (2) that the cause of action for the suit was not the Magistrate's order delivering possession to the defendants but the declaration of plaintiffs' title by the High Court in second appeal; and (3) that the order of the Magistrate under S. 146 of the Cr. P. Code was not an adverse order which ought to be set aside under Art. 47.

26 M. 410 followed.

10 L. W. 637 referred to.

K. V. Venkatasubramania Aiyar for Appellant.

K. Rajah Aiyar for Respondent.

N. S.

Waller, J.
28th July, 1927. } C. S. No. 354 of 1913.

Civil Procedure Code, O. 21, R. 2, cl. 3—Scope of—Court passing the decree—Application to, for transfer of a decree—If precluded from recognising uncertified adjustment.

The prohibition contained in O. 21, R. 2, cl. 3 of the C.P. Code in respect of an uncertified adjustment applies only to the court executing the decree. Where therefore an assignee of a decree applies to the High Court as the Court which passed the decree for transmission of

decree to another Court for purpose of execution the judgment-debtor is not precluded from pleading an uncertified adjustment.

V. Ramasami Aiyar for Judgment-debtor.

K. Chakravarthi for Execution Creditor.

N. S.

Madhavan Nair &
Curgenven, JJ.
28th July, 1927.

R. C. No. 17 of 1926.

Village Courts Act, S. 5—Decree by a village court—Power of District Munsif to transfer decree to another court—Provisions of Civil Procedure Code if applicable to decrees of village court.

The District Munsif having jurisdiction over a place where the village court is situated has no power to transfer a decree of the village court to another District Munsif's Court wherein the defendant resides, as the provisions of the C. P. Code do not apply to proceedings under the Village Courts Act except in so far as they have been made applicable by the Act itself.

46 M. 734 followed.

B. Somayya and *K. Venkatarama Raju* amicus curiae for the parties.

N. S.

Madhavan Nair &
Curgenven, JJ.
29th July, 1927.

L. P. A. No. 98 of 1926.

Civil Procedure Code, S. 102—Second appeal—Suit of a Small Cause nature—Suit by Shrotriemdar for recovery of cess against Kudivaramdar—Provincial Small Cause Courts Act, Art. 13.

A suit by Shrotriemdar to recover arrears of cess from the Kudivaramdar does not fall under Art. 13 of the Provincial Small Cause Courts Act. Such a suit is one of a Small Cause nature and, if the valuation of it is less than Rs. 500, no second appeal lies under S. 102 of the C. P. Code.

L. S. Veeraraghava Aiyar for Appellant.

A. V. Viswanatha Sastri for Respondent.

N. S.

Ramesam & Cornish, JJ.
29th July, 1927.

C. M. A. No. 183 of 1925.

Civil Procedure Code, Ss. 47 and 92—Scheme decree—Executability.

Whether a clause in a scheme decree is executable or not will depend upon its nature. The question is one of intention and will not depend upon the presence of express provision in the scheme that enforcement of the clause might be applied for in the execution except where the relief asked for in execution would be one coming within the specific reliefs enumerated in S. 92, C. P. Code, the scheme provisions can be enforced in execution.

Case-law reviewed.

S. Varadachariar for Appellant.

K. Bhashyam Aiyangar for Respondent.

N. S.

Wallace, J.
28th July, 1927.

Cr. Rev. Case Nos. 916 to 919 of 1926.

Indian Copyright Act (III of 1914)*—Owner of copyright—Who is—Registration—When necessary.*

An author of a work is *prima facie* the owner of its copyright under Act III of 1914.

Even under Act XX of 1847 and Act XXV of 1867 while registration was a necessary condition precedent to the maintenance of the special proceedings provided for by the said Acts, it was not a condition precedent to the existence of the copyright itself, or to the maintenance of criminal proceedings for unlawful infringement of the copyright not provided for by the said Acts.

36 L. T. 704, (1914) 2 Ch. 566, (1913) M. W. N. 58 referred to.

Ch. Raghava Rao for Petitioners.

The Public Prosecutor for the Crown.

V. Govindarajachariar and *K. L. Narasimha Rao* for Respondents.

N. S.

Madhavan Nair & *Curgenven, JJ.*
29th July, 1927.

C. M. S. A. No. 87 of 1925.

Limitation Act, Art. 182 (5)*—Step-in-aid—Oral application for extension of time to file encumbrance certificate.*

An oral application by decree-holder for extension of time to file encumbrance certificate is not a step-in-aid of execution.

P. Somasundaram for Appellant.

P. Chenchiah for *P. Venkataramana Rao* for Respondents.

N. S.

Srinivasa Aiyangar & *Reilly, JJ.*
1st August, 1927.

S. A. Nos. 1192 and 1193 of 1924.

Hindu Law—Maintenance of widow of undivided brother—Whether can be made a charge on entire family properties.

Where a widow of an undivided brother claimed maintenance, the maintenance can be made a charge on the whole of the joint family properties and not merely on the undivided share of the deceased brother.

27 Mad. 45 explained.

25 LC. 759 followed.

A. Srirangachariar for Appellant.

T. M. Krishnaswami Aiyar and *R. Somasundaram Aiyar* for Respondents.

N. S.

Srinivasa Aiyangar & *Reilly, JJ.*
1st August, 1927.

A. S. No. 402 of 1923.

Hindu Law—Adoption by widow—Widow succeeding to her husband as trustee—Divesting of trust estate.

N R C

A widow succeeding to her husband as a trustee and subsequently adopting a boy pursuant to authority conferred by her husband is divested of the trust estate as of any other property inherited by her. It is not correct to say that the rule of divestiture by virtue of an adoption does not apply to property inherited by the widow in which she has no beneficial interest. Statement of Ganapathy Iyer in his work on Endowments at page 477 held wrong.

The case in 20 Mad. 162 (P.C.) on which it was based distinguished.

51 M. L. J. 652 distinguished.

T. V. Venkatarama Aiyar and *T. V. Ramanatha Aiyar* for Appellants.

A. Krishnaswami Aiyar and *Ch. Raghava Rao* for Respondents.

N. S.

Ramesam & Cornish, JJ.
2nd August, 1927. } O. S. A. No. 124 of 1926.

Indian Succession Act (1925), *S.* 301—*Scope—Application for the removal of an executor—If bars suit—Discretion—Exercise of.*

The effect of the enactment of S. 301 of the new Indian Succession Act is to bar the institution of a regular suit for the removal of an executor.

The discretion to be exercised by the High Court under S. 301 is not an arbitrary one but must be exercised judicially.

K. S. Krishnaswami Aiyangar for Appellant.

S. *Doraiswami Aiyar* for Respondent.

N. S.

Phillips, Offg. C.J. and Ananthakrishna Aiyar, J.
3rd August, 1927. } O. S. A. No. 100 of 1926.

Partnership—Dissolution—Non-publication of notice—Persons dealing with the firm without notice—Rights of.

Persons who deal with a firm will not be affected by its dissolution if no public notice has been given of the fact of dissolution unless they themselves had notice of the dissolution. A retiring partner will not be relieved from liability if he omits to give a public notice of retirement to the constituents of the partnership firm both new and old.

A. Suryanarayana for Appellant.

Respondent not represented.

N. S.

Curgenven, J.
4th August, 1927. } C. R. P. No. 822 of 1927.

Madras District Municipalities Act—Judge conducting enquiry under—If a " Court ".

A Judge who holds an enquiry into the validity of an election held under the Madras District Municipalities Act is a " Court " and not a *persona designata.*

K. Rajah Aiyar and *K. S. Desikan* for Petitioner.

N. S.

Ramesam and Cornish, JJ.
29th July, 1927.

A. S. No. 348 of 1923.

Court-Fees Act, S. 7 (v) (a) and (b)—Suit for recovery of specific plot—Plot forming part of a survey number but not separately assessed to revenue—Court-fee payable.

The proper court-fee payable on a plaint in a suit to recover possession of a specific plot forming part of a survey number but not separately assessed to revenue is on the proportionate assessment of the plot and not on its market value.

A. Krishnaswami Aiyar and *B. C. Seshachela Aiyar* for Appellant.

K. Bhashyam Aiyangar and *V. C. Veeraraghavan* for Respondent.

N. S.

Madhavan Nair and Curgenven, JJ.
3rd August, 1927.

C. M. A. No. 454 of 1926.

Evidence Act, S. 92 (4)—Registered mortgage deed—Contemporaneous unregistered agreement providing for the discharge of the mortgage—Admissibility—Sub-mortgagee—Rights and liabilities of.

An unregistered document executed contemporaneously with a registered mortgage deed and providing for the mode of discharge of the mortgage is admissible in evidence.

43 M. 803 referred to.

A sub-mortgagee has the same rights as an assignee of the mortgage and consequently must give credit to the amounts received by the mortgagee.

K. S. Varadachari for Appellant.

S. Rangachari for Respondent.

N. S.

Srinivasa Aiyangar and Reilly, JJ.
4th August, 1927.

S. A. No. 433 of 1926.

Limitation Act, S. 5—Sufficient cause—Error of law—Appellate Side Rules, Rule 20—Clerical error—Omission to include a respondent's name due to mistake in copying.

An error of law made by a Vakil may be " sufficient cause " within S. 5 of the Limitation Act.

45 C. 94 (P. C.) followed.

The mistake made by a Vakil's clerk in omitting a respondent's name when copying it from the judgment of the Lower Court, there being two judgments, one before and the other after remand, is a " clerical mistake " within the meaning of Rule 20 of the Appellate Side Rules.

Advocate-General for Appellant.

K. S. Krishnaswami Aiyangar for Respondent.

N. S.

N R C

Waller, J.
5th August, 1927.
C. S. No. 103 of 1926.

Limitation Act, Arts. 62 and 96—Consignment of cotton seeds by Railway—Collection of surcharges by the Railway—Suit for recovery of surcharges.

The plaintiff instituted a suit for recovery of surcharges alleged to have been legally collected from the plaintiff in respect of consignment of cotton seeds by the Railway Company on the ground that cotton seeds came within the definition of 'fodder' within the meaning of the Railways Act of 1921.

Held, that the mistake alleged by the plaintiff being as to the meaning of the word 'fodder' was one relating to the construction of enactment and such a mistake of law would not be a mistake within the Art. 96 of the Limitation Act. Only mistakes of fact will come within the scope of the Article.

K. V. Ramachandra Aiyar for Plaintiff.

Advocate-General for Defendant.

N. S.

Srinivasa Aiyangar and Reilly, JJ.
5th August, 1927.
S. A. No. 978 of 1924.

Madras Estates Land Act, Ss. 125 and 132—"Sale"—If includes sale held by Civil Courts—Rent decree—Transfer to Civil Court—Sale—Encumbrances if extinguished.

The "sale" mentioned in S. 125 of the Madras Estates Land Act means a sale held under the provisions of S. 111, *i.e.*, a sale by a Revenue Court.

Where a Revenue Court decree is transferred to the Civil Court and properties were sold in execution, the sale does not extinguish the encumbrances on the properties.

G. Lakshmanna for Appellant.

P. Somasundaram for Respondent.

N. S.

Curgenven and Anantha-krishna Aiyar, JJ.
8th August, 1927.
S. A. No. 1366 of 1921.

Evidence Act, S. 92 (4)—Simple mortgage—Oral agreement for the discharge of the mortgage amount by allowing the mortgagee to enter into possession—Admissibility.

An oral agreement between the mortgagor and the mortgagee in a simple mortgage by which the mortgagee was to enter into possession and remain in possession till the amount due to him was discharged out of the usufruct is admissible in evidence.

G. Ramakrishna Aiyar for Appellant.

P. Somasundaram for Respondent.

N. S.

Jackson and Tiruvenkata Achariyar, JJ. 9th *August*, 1927: } C. M. S. A. No. 6 of 1926.

Civil Procedure Code, O. 21, R. 84—Forthwith—Meaning of—Failure of bidder to pay the initial deposit of 25 per cent.—Re-sale on fresh proclamation after 2 months—Validity.

In execution of a decree certain properties were sold on 1st September, 1923. The highest bidder failed to pay the 25 per cent. deposit on that day. The next two days were holidays and on the 4th the non-payment was reported to the Court which ordered a re-sale after the issue of a fresh proclamation. The re-sale on fresh proclamation was held on 5th November and resulted in deficiency in price. The decree-holder applied under O. 21, R. 84 of the Civil Procedure Code to recover the deficiency in price from the previous bidder.

Held, by Jackson, J. (Tiruvenkata Achariyar, J., holding *contra*) that the re-sale, though it was held after 2 months from the date of the prior sale, was not in contravention of O. 21, R. 84 of the Civil Procedure Code and was not invalid.

Ch. Raghava Rao for Appellant.

B. Somayya for Respondent.

N. S.

Curgenven and Ananthakrishna Aiyar, JJ. 9th *August*, 1927. } S. A. No. 1420 of 1924.

Hindu Law—Partition suit by minor—Birth of son subsequent to the institution of suit—Plaintiff's share if reduced.

The birth of a son subsequent to the institution of a partition suit by a member of a joint family does not have the effect of reducing the plaintiff's share even where the plaintiff happens to be a minor surviving by a next friend. Though it may depend on the Court's discretion whether to decree a partition in favour of a minor or not, yet once the Court makes its mind to decree a partition, the severanee of the co-parcenary dates back to the institution of the suit itself, even as in the case of an adult co-parcener suing for partition.

48 Mad. 465 and 26 L. W. 125 followed.

Ch. Raghava Rao and *A. Sundaram Aiyar* for Appellants.

K. Kameswara Rao for Respondent.

N. S.

Srinivasa Aiyangar and Reilly, JJ. 10th *August*, 1927. } S. A. No. 1150 of 1924.

Transfer of Property Act, S. 58 (c)—Mortgage by conditional sale—Non-specification of date for repayment of amount—Effect.

There is nothing in the definition of mortgage by conditional sale in S. 58 (c) of the Transfer of Property Act which requires that a certain date must be fixed for repayment of the amount borrowed. Consequently the non-specification of such a date in the document does not show that it is not a mortgage by conditional sale.

A. Krishnaswami Aiyar and *N Sivaramakrishna Aiyar* for Appellant.

B. Somayya for Respondent.

N. S.

Curgenven and Anantha-krishna Aiyar, JJ. } S. A. No. 1402 of 1924.
10th August, 1927.

Words—Santhathi—Meaning of—If includes adopted son.

The word " Santhathi " means ordinarily " heirs ", and will include an adopted son.

S. Ramaswami Aiyar for Appellant.

P. N. Appuswami Aiyar for Respondent.

N. S.

Madhavan Nair and Curgenven, JJ. } C. M. S. A. No. 25 of 1925 and C. R. P. No. 326 of 1925.
11th August, 1927.

Civil Procedure Code, O. 21, R. 89—Lessee of immoveable property—Right to apply under.

A lessee of immoveable property is entitled to apply under O. 21, R. 89 of the Civil Procedure Code for the setting aside of the sale of the property held in execution of a decree.

P. Chenchiah for Appellant.

V. S. Narasimhachar for Respondent.

N. S.

Madhavan Nair and Curgenven, JJ. } C. R. P. No. 382 of 1927.
11th August, 1927.

Madras District Municipalities Act, S. 49, cl. (vi)—Rules for the conduct of elections—Rule 31—Interpretation by Government of the sections of the Act—Finality—Jurisdiction of Civil Court if barred.

The finality under Rule 31 of the Rules for the Conduct of Elections under the District Municipalities Act attaches only to the interpretation by the Government of the Rules made under the Act and not of the sections of the Act and consequently the interpretation put by the Government on a section of the Act is not binding on the Civil Court nor is the jurisdiction of the Civil Court barred in respect of it.

B. Sitarama Rao and *S. R. Muthuswami Aiyar* for Petitioner.

K. V. Krishnaswami Aiyar and *N. Swaminathan* for Respondent.

N. S.

Jackson, J. } Cr. R. C. No. 285 of 1927. Cr. R. P. No. 253 of 1927.
11th August, 1927.

Criminal Procedure Code, S. 522—Order by Sub-Magistrate—If appealable.

Where an order of delivery of property was passed by a Sub-Magistrate some time after conviction, and an appeal was filed separately against that order

Held, no appeal lay.

Full Bench ruling in 53 M. L. J. (R. C.) 2=25 L. W. (R. C.) 76 considered.

M. Appa Rao for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Srinivasa Aiyangar and Curgenven, JJ. 16th August, 1927. S. A. No. 720 of 1924.

Limitation—Suspension of—Grounds not specified in the Limitation Act—Amounts advanced by karnavan to the tarwad—Cause of action whether suspended so long as karnavan was alive.

The Limitation Act is exhaustive and complete and no general principle based upon equity can be invoked apart from the provisions of the Act to save the bar of limitation. The cause of action is not suspended simply because the right to sue and be sued is united in the same person. The cause of action for a suit in respect of debts advanced by a karnavan to his tarwad is not suspended during the lifetime of the karnavan.

K. P. M. Menon for Appellant.

T. R. Ramachandra Aiyar for Respondent.

N. S.

Ramesam and Cornish, JJ. 16th August, 1927. A. S. No. 349 of 1923.

Inam—Construction—Devadayam—Grant to institution or to individual—Resumption of inam and re-assessment on ryotwari tenure—Validity—Suit to set aside resumption—Limitation—Limitation Act, Art. 14—Grant to trustee himself after resumption—Effect—Trusts Act, S. 88—Property if becomes trust property—Bona fide *purchaser for value—Rights of.*

The inclusion of the word "Devadayam" in an inam deed is not conclusive in favour of dedication. The classification of inams as Devadayam includes both grants to a religious institution as such and also grants to individuals who may or may not be officials in religious institutions.

A grant to a person in his capacity as an official of a religious institution is a grant to the institution itself. Where a substantial part of the income goes to a mosque or a temple, the grant is one to the institution. In all other cases a grant to a named person will not be a grant to the institution, but to the grantee as a *persona designata*.

A grant to a person as 'Mulla' does not necessarily mean a gift to a mutawalli or to a mosque.

Where the inam title deed is not forthcoming, and where the Inam Register is not clear, usage can and must be looked into for determining the nature of the grant.

Where from 1874 till 1909 certain properties were dealt with as ancestral property by way of usufructuary mortgages,

Held, that the property was granted only as a service inam to a named person and not to the institution in which those services were directed to be performed.

Where for failure to perform the services the Board of Revenue resumed the inam and re-assessed the property on Ryotwari tenure,

Held, that the resumption was *intra vires* and that Art. 14 of the Limitation Act applied to the suit to set aside the resumption or declare the resumption invalid.

N. R. C

42 M. 161 dissented from.

There is no fresh cause of action by the mere issue of a patta after resumption.

Quære: In a case where after-resumption the properties are granted to the trustee himself, whether the principle of S. 88 of the Trusts Act applies ?

42 M. 161, doubted.

Assuming S. 88 of the Trusts Act applies to such a case, the property will not become trust property in the absence of a declaration of Court that it is so.

38 M. 329 applied.

And *bona fide* purchasers for value without notice will have superior rights before it is again declared as trust property.

T. M. Krishnaswami Aiyar, N. Sivaramakrishna Aiyar and *N. C. Krishna Aiyar* for Appellant.

The Government Pleader (P. Venkataramana Rao), P. R. Ganapathy Aiyar, Ch. Raghava Rao and *V. Krishna Mohan* for Respondents.

N. S.

Curgenven, J.
16th August, 1927.
C. R. P. No. 1212 of 1925.

Civil Procedure Code, S. 73—Assets paid over to other decree-holders on date of application—Suit proper remedy.

Where on the date of an application for rateable distribution, the assets have been paid over to other decree-holders, the proper remedy of the aggrieved decree-holder is by a suit under S. 73 (2), Civil Procedure Code.

23 A. 313 (P.C.) applied to.

V. Ganapati Ayya for Petitioner.

N. Sivaramakrishna Aiyar for Respondent.

N. S.

Wallace, J.
17th August, 1927.
C. R. P. No. 1001 of 1926.

Civil Procedure Code, O. 1, R. 10 and O. 22, R. 4—Death of defendant—Legal representative not impleaded in time—If can be added as parties under O. 1, R. 10.

The provisions of O. 1, R. 10, Civil Procedure Code, cannot be resorted to so as to override the provisions of O. 22, R. 4. Consequently a Court cannot add as parties to the suit the legal representatives of a deceased defendant who have not been impleaded as such within the time allowed by law.

G. Lakshmanna for Petitioner.

V. Suryanarayana for Respondent.

N. S.

Jackson and Tiruvenkata Achariyar, JJ.
18th August, 1927.

C. R. P. No. 1276 of 1925.

Specific performance—Decree for—Power of Court to extend time fixed in the decree.

The Court has power to extend the time fixed in the decree for specific performance of a contract.

Case-law reviewed.

N. C. Vijayaraghavachari for Petitioner.

P. Satyanarayana for Respondent.

N. S.

The Offg. Chief Justice, Beasley and Ananthakrishna Aiyar, JJ.
19th August, 1927.

A. S. No. 226 of 1923.

Court Fees Act (V of 1922)—Maintenance suit filed under the old Act of 1870—Appeal under the new Act—Valuation—Forum of appeal—New Act if retrospective.

A suit for maintenance was filed while the Court Fees Act of 1870 was in force and was valued at a sum over Rs. 10,000. At the time of the appeal, the new Act of 1922 had come into force. According to the valuation under the new Act, the value would be less than Rs. 5,000.

Held, that the appeal lay to the High Court and not to the District Court, as the right of appeal which was a valuable right could not be taken away by the new Act which was not retrospective.

T. Rangachariar and *E. V. Sundara Reddi* for Appellant.

K. V. Krishnaswami Aiyar and *N. S. Srinivasa Aiyar* for Respondent.

N. S.

Srinivasa Aiyangar, J.
19th August, 1927.

C. R. P. Nos. 38 to 47 of 1927.

Provincial Small Cause Courts Act, Ss. 23 and 25—Suit for rent based on attornment—If depends on proof of title to immoveable property—Order directing return of plaint—When justifiable—Revision—Interference.

A Small Cause suit was filed by the usufructuary mortgagee for rent on the ground that the defendants had attorned to him and were paying rent but subsequently failed to pay it. The Court ordered the plaint to be returned on the ground that it had no jurisdiction to entertain it as the defendants disputed the plaintiff's title to the properties. Thereupon the plaint was presented to the District Munsif's Court but it was returned on the ground that the properties exceeded Rs. 3,000 in value and consequently beyond the pecuniary jurisdiction of the Munsif. Thereupon the plaint was presented to the Sub-Court, but that Court again returned it on the ground that it had no jurisdiction to entertain it as the value of the rent sued for was below Rs. 3,000.

Held, (1) that the order of the Small Cause Court returning the plaint was wrong as the claim for rent was based on attornment and did not depend upon proof of title ;

N. R. C.

(2) that the order returning the plaint was an "order in a case decided" within the meaning of S. 25 of the Act.

T. S. Venkatesa Aiyar for Petitioner.

F. S. Vas for Respondent.

N. S.

Srinivasa Aiyangar and Curgenven, JJ. 22nd August, 1927. } S. A. No. 1343 of 1924.

Contract Act, S. 96—If applies to unascertained goods.

The vendor's lien specified in S. 96 of the Contract Act can be exercised even in the case of unascertained goods.

L. R. 8 Chancery Appeals 289 referred to.

L. A. Govindaraghava Aiyar for Appellant.

S. Varadachariar and *K. S. Champakesa Aiyangar* for Respondent.

N. S.

Madhavan Nair and Jackson, JJ. 24th August, 1927. } C. M. S. A. No. 128 of 1925.

Civil Procedure Code, S. 47—Attachment in execution of decree—Subsequent lease by judgment-debtor—Lessee if a "representative"—Appeal.

A lessee from the judgment-debtor subsequent to the attachment of the properties in execution of the decree is a "representative" of the judgment-debtor within the meaning of S. 47 of the Civil Procedure Code.

21 A. 20 followed.

Ch. Raghava Rao for Appellant.

K. Kameswara Rao and *A. Ramasami Aiyangar* for Respondent.

N. S.

The Offg. Chief Justice, Beasley and Anantha-krishna Aiyar, JJ. 1st September, 1927. } C. M. S. A. No. 132 of 1925.

Civil Procedure Code, S. 47—Decree against karnavan of Malabar tarwad—Attachment of tarwad properties in execution—Objection by some members of the tarwad on the ground that they belong to their own tavazhi and not to the tarwad—Order on—If falls under section.

Where properties are attached as belonging to the tarwad in execution of a decree against the karnavan of a Malabar tarwad and some members of the tarwad file an objection to the attachment on the ground that the properties belong to their own tavazhi and not to the tarwad, it does not fall under S. 47 of the Civil Procedure Code, as the objection was agitated by the members in a capacity different from the one in which the karnavan was impleaded and made liable under the decree.

23 M. 195 and 31 I. C. 393 followed.

24 M. 658 and 30 M. 215 overruled.

K. Krishna Menon for Appellant.

K. P. Ramakrishna Aiyar for Respondent.

N. S.

The Offg. Chief Justice, Ramesam and Beasley, JJ. } Ref. Case No. 16 of 1926.
5th September, 1927.

Indian Income-tax Act, Ss. 2 (1) *and* 4 (3) (8)—*Agricultural income—Lease of trees—Income from toddy tapped from trees.*

The income from toddy tapped from trees by the lessee of the trees only (and not of the land on which the trees stand) is not "agricultural income" within the meaning of S. 2 (1) of the Income-tax Act.

K. S. Jayarama Aiyar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

The Offg. Chief Justice, Ramesam and Beasley, JJ. } Ref. Case No. 7 of 1926.
5th September, 1927.

Indian Income-tax Act, S. 50—"*Tax was recovered*"—*Meaning of.*

The words "Tax was recovered" in S. 50 of the Income-tax Act do not mean the refund to the assessee of the tax already paid by him but mean the collection of the tax from the assessee.

Vere Mockett for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Madhavan Nair and Jackson, JJ. } C. M. A. No. 256 of 1925.
6th September, 1927.

Transfer of Property Act, S. 59—*Usufructuary mortgage—Redemption of portion—Subsequent oral agreement substituting other items as security—Validity.*

The plaintiff had executed a usufructuary mortgage in 1889 of the A Schedule properties for Rs. 700 for a period of 7 years. Subsequently he redeemed a portion of it on payment of Rs. 100. Later on an oral agreement was entered into by which the C Schedule properties were accepted by the mortgagee as substituted security for the A Schedule properties for a fresh period of 6 years. The plaintiff instituted a suit for redemption.

Held, that the oral agreement amounted to an oral mortgage of the C Schedule properties which was invalid under S. 59 of the T. P. Act and consequently the suit must fail.

V. Ramasami Aiyar for *C. Padmanabha Aiyangar* for Appellant.

K. S. Venkatraman for Respondent.

N. S.

Madhavan Nair and Jackson, JJ. } C. M. S. A. No. 37 of 1926.
6th September, 1927.

Malabar Tenants Act (I of 1900), *Ss.* 5 *and* 6—*Decree for redemption—Appeal by tenant for enhanced compensation—Decree by Appellate Court for enhanced compensation—Ejectment of tenant by first Court's decree—If tenant entitled to mesne profits after ejectment till payment of enhanced compensation.*

Where in a decree for redemption and ejectment against a tenant, the tenant was awarded compensation by the Munsif's Court and the tenant was ejected on payment of compensation, but he filed an appeal and got a higher amount for compensation and claimed mesne profits between the time of ejectment and payment of the enhanced amount.

Held, that the tenant was not entitled to mesne profits but only to interest on the enhanced amount from the time of ejectment.

45 M. L. J. 323 followed.

K. P. Ramakrishna Aiyar for Appellant.

A. Sivarama Menon for Respondent.

N. S.

Wallace and Tiruvenkata Achariyar, JJ.
6th September, 1927.

C. M. A. No. 253 of 1927.

Mahomedan Law—Hiba-bil-ewaz—Sale—Transfer by husband to wife in satisfaction of dower which had been fixed—Civil Procedure Code, O. 41, R. 23—Appeal from order of remand—Issues not dealt with by the Appellate Court—If can be argued.

Where the dower amount due by a Mahomedan husband to his wife has been already fixed and the husband transfers property to his wife in satisfaction of this amount, the transfer amounts to a sale according to Mahomedan Law. But, if the transfer is in satisfaction of unascertained dower, the transfer is not a sale.

5 A. 65 referred to.

In an appeal from an order of remand, the appellant can only argue whether the order of remand is a legal one; he is not entitled to support the decree of the first Court on grounds and issues not dealt with by the lower Appellate Court which passed the order of remand.

V. Thiagaraja Aiyar for Appellant.

M. A. Aseem for Respondent.

N. S.

The Offg. Chief Justice, Ramesam and Beasley, JJ.
6th September, 1927.

Ref. Case No. 21 of 1925.

Indian Income-tax Act, S. 3—Association—Combination of persons for taking in auction toddy shops and sharing the profits—Liability for assessment to income-tax.

A combination of persons who enter into an arrangement to take in auction, work and share the profits of toddy shops and share the profits does not contravene any rule of the Abkari Act and is not an illegal association, and consequently is assessable to income-tax in respect of the profits derived by it.

T. R. Ramachandra Aiyar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Madhavan Nair and Jackson, JJ.
6th September, 1927.

C. M. S. A. No. 151 of 1925.

Civil Procedure Code, O. 21, Rr. 16 and 18—Assignment of decree—Judgment-debtor if can plead the absence of consideration for the assignment—Subsequent decree not between same parties—Right to set off.

It is not open to the judgment-debtor to raise the plea of the absence of consideration for the assignment of the decree, where the decree-holder admits the assignment.

There is no right to set off under O. 21, R. 18, C. P. C., where the subsequent decree is not between the same parties in the same character.

K. S. Champagesa Aiyangar for Appellant

B. Somayya for Respondent.

N. S.

Srinivasa Aiyangar and Curgenven, JJ.
6th September, 1927.

S. A. Nos. 1082 of 1924 and others.

Company—Voluntary winding up—Bond in the name of the company—Assignment by person purporting to act as liquidator but not properly appointed—Validity.

The assignment of a bond which stands in the name of a company by a person purporting to act as the liquidator in the voluntary winding up of the company is not valid, if he was not properly, or in fact, appointed as liquidator.

The Advocate-General and *S. Ramasami Aiyar* for Appellant.

P. N. Marthandam Pillai for Respondent.

N. S.

Wallace and Tiruvenkata Achariyar, JJ.
7th September, 1927.

L. P. A. No. 67 of 1924.

Hindu Law—Minor—Agreement to sell immoveable property by guardian of the minor—Agreement for the benefit of the minor—Specific performance—If can be decreed.

A contract to sell immoveable property belonging to a minor by his guardian is not specifically enforceable against the minor, even though it is for the benefit of the minor.

42 M. 185 distinguished.

39 C. 232 (P. C.) followed.

B. Sitarama Rao and *N. S. Srinivasa Aiyar* for Appellant.

M. Patanjali Sastri for Respondent.

N. S.

N R C

Jackson, J.
8th September, 1927. } Cr. A. No. 397 of 1927.

Opium Act, S. 9—*Criminal intention—If necessary—License given for removing opium on one day—Removal of greater portion on that day—Removal of the balance on subsequent day—Effect.*

License issued for removing opium on a certain day does not permit the removal, on the next day, of a portion of it which was not removed the previous day.

Under S. 9 of the Opium Act it is not necessary to prove a criminal intention.

J. C. Adam (Public Prosecutor) for the Crown.

M. Patanjali Sastri for Accused.

N. S.

Wallace and Tiruvenkata Achariyar, JJ.
8th September, 1927. } S. A. Nos. 1550 & 1551 of 1922.

Madras Estates Land Act, S. 77—*Rent not previously ascertained—Suit under the section—If maintainable.*

The fact that the rate of rent has not been previously ascertained is no bar to the institution of a suit for rent under S. 77 of the Madras Estates Land Act. The Court should determine the proper rate of rent in the suit itself.

21 L. W. 42 followed.

Sir K. V. Reddi for Appellant.

V. Govindarajachari for Respondent.

N. S.

Ramesam and Cornish, JJ.
12th September, 1927. } O. S. A. No. 58 of 1926.

Arbitration—Award—Misconduct of umpire—Refusal to state a case to High Court on question of law—Taking independent legal advice.

A refusal, by the umpire, to state a case to the High Court on a question of law arising in the arbitration proceedings does not amount to legal misconduct, but, if the umpire takes independent legal advice, it will amount to legal misconduct.

Nugent Grant and *K. S. Krishnasami Aiyangar* for Appellant.

Vere Mockett for Respondent.

N. S.

The Offg. Chief Justice, Beasley and Anantha-krishna Aiyar, JJ.
12th September, 1927. } O. S. A. No. 16 of 1925.

Indian Succession Act, S. 187—*Unprobated will—If can be relied upon in defence.*

A defendant who relies upon an unprobated will in defence to a suit by the heir-at-law is trying "to establish his right as executor or

legatee " within the meaning of S. 187 of the Indian Succession Act and this is prohibited by the section.

K. S. Krishnasami Aiyangar and *K. Bhashyam Aiyangar* for Appellant.

C. Venkatasubbaramiah for Respondent.

N. S.

The Offg. Chief Justice and Srinivasa Aiyangar, J.
13th September, 1927.

A. S. No. 339 of 1923.

Civil Procedure Code, S. 98—Suit for accounts—Decree—Appeal—Judges agreeing as regards all items except one but disagreeing as regards the one item—Effect.

In an appeal from the decree in a suit for accounts, both the Judges agreed that a number of items disallowed by the Lower Court should be allowed but with regard to one item they differed.

Held, that the result of this difference was that the decree of the Lower Court should be set aside in respect of the items which, both the Judges agreed, should be allowed and confirmed in respect of the item as regards which they differed.

The word " opinion " in S. 98 (1) does not mean opinion on all the points raised in the appeal.

C. S. Venkatachari and *V. K. Srinivasa Aiyangar* for Appellant.

T. V. Muthukrishna Aiyar, K. Narasimha Aiyangar, S. Panchapagesa Sastri and *V. C. Veeraraghavan* for Respondent.

N. S.

Wallace and Tiruvenkata Achariyar, JJ.
13th September, 1927.

A. S. Nos. 353 and 27 of 1924.

Hindu Law—Partition deed—Construction of—" A and his wife and her heirs "—Whether operates as a gift in praesenti *or an executory estate—Validity of—Provision for altered succession—If opposed to Hindu Law.*

Where in a partition deed between father and son it was provided that the property allotted to No. 1 individual should be enjoyed by him absolutely, and the property allotted to No. 2 individual should be enjoyed by him and his heirs, and where it was further provided that in the properties allotted to No. 1 individual, individual No. 2 or his heirs shall have no rights and that the properties that are allotted to the first individual should belong to him, his named wife and her heirs.

Held, that such a provision that the property should go to No. 1 individual, his wife and her heirs being in variance with the line of succession recognised by Hindu Law is invalid.

Held further that the wife of individual No. 1 did not get any interest in the property either jointly with her husband or after his death

contingent on the property being undisposed of and that the term " to her and her heirs " was merely declaratory of the intention of the parties.

27 M. 498 distinguished.

S. Jagadisa Aiyar and *V. Rajagopala Aiyar* for Appellants.

T. M. Krishnaswami Aiyar, *K. Aravamuthu Aiyangar* and *N. Swaminathan* for respondents.

N. S.

Wallace and Tiruvenkata Achariyar, JJ.
13th September, 1927.

A. S. No. 414 of 1925.

Limitation Act, Art. 132—Mortgage bond—Construction of—Provision for the whole amount becoming due in default of payment of interest—" On demand"—Whether demand necessary—Exercise of option—Evidence of.

In a mortgage bond executed on 22nd January, 1908, it was provided that " the mortgagors should pay before the 22nd January of each year the interest arrived at on the principal amount at the rate of 9 per cent. per annum and pay the principal sum within a period of 5 years from the date of mortgage." In default of payment of interest or principal on such due dates they agreed to the mortgagee adding to the principal sum the interest due each year from the date of default and recovering the " total amount " with interest at the said rate without regard to the due date for payment of principal, whenever the mortgagee required, by proceeding against the mortgagors and the hypotheca. The mortgagor did not pay any interest on the due date but the interest up to 15th June of 1909 was paid on the basis of enhanced rate from the due date and also on the principal as well as the interest. Another sum was paid towards the principal.

Held, (1) that the words " whenever you require " made the demand essential and a demand was necessary before the cause of action could accrue and the limitation began to run only from the date of demand.

" On demand " does not mean forthwith or immediately.

39 M. 981 followed.

53 I. A. 185=I.L.R. 48 A. 457 relied upon.

(2) that under the deed it was open to the mortgagee to exercise his option to call in the principal amount and that on the exercise of such option limitation began to run from that date ;

(3) the fact of payment of interest on the footing of enhanced rate up to the date of payment even before the due date for the second instalment arrived imported a demand.

Further the fact of payment of interest before the due date for principal also imported a demand.

14 Ch. D. 687 *In re Rutherford* followed.

9 L. W. 479 distinguished.

K.V. Krishnaswami Aiyar and *S. Jagadisa Aiyar* for Appellants.

A. Krishnaswami Aiyar, M. Patanjali Sastri and *R. Somasundaram Aiyar* for Respondents.

N. S.

Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.
12th September, 1927.

S. A. Nos. 1, 2 and 10 of 1925.

Hindu Law—Alienation by limited owner—Improvements made by alienees—Suit to recover possession with mesne profits by reversioner—If reversioner entitled to mesne profits.

Where a limited female owner of an estate under Hindu Law alienated some properties absolutely and the alienees *bona fide* believing that they have absolute title made improvements on the property and the reversioner subsequently brought the suit to recover the property together with mesne profits till date of recovery of possession,

Held, that the plaintiff was not entitled to recover mesne profits which are in any way attributable to the improvements effected by the alienees whose right to the value of improvements had not been questioned.

T. R. Ramachandra Aiyar and *K. P. Ramakrishna Aiyar* for Appellants.

G. Krishnaswami Aiyar and *A. Parameswara Aiyar* for Respondents.

N. S.

Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.
12th September, 1927.

S. A. No. 1861 of 1925.

Hindu Law—Joint family—Father—Alienation—Major portion of the consideration for necessity—Rights of minor son.

Where all the joint family properties were already in the possession of strangers under *othis* and the father and another adult coparcener sold the properties for a sum of Rs. 580 and it was found by the Court below that only Rs. 325 out of this amount went in discharge of debts binding on the joint family,

Held, that the sale as a whole must be upheld.

49 A. 149 (P. C.) referred.

T. M. Ramaswami Aiyar for Appellant.

V. Rajagopala Aiyar for Respondent.

N. S.

Madhavan Nair and Curgenven, JJ.
13th September, 1927.

C. M. A. No. 83 of 1927.

Madras Local Boards Act—Rules under—Rule 1—"Election"—Meaning of.

The word " election " has not been defined in the Madras Local Boards Act or in the Rules framed thereunder. It does not mean a process of selection. It embraces the whole procedure whereby an elected member is returned whether or not it be found necessary to have a polling.

Where three persons offered themselves for election to a vacant seat but, on the date fixed for the scrutiny of nomination papers, the

nomination paper of one of them was rejected and later on another withdrew with the result that the third person was declared elected;

Held, that this amounted to an "election" within the meaning of Rule 1 of the Rules framed under the Madras Local Boards Act.

51 M. L. J. 193 not followed.

45 M. L. J. 23 and 47 M. L. J. 792 followed.

E. V. Sundara Reddi for Appellant.

L. S. Veeraraghava Aiyar for Respondent.

N. S.

The Offg. Chief Justice and Reilly, J.
14th September, 1927.
O. S. A. No. 77 of 1926.

Hindu Law—Adoption by widow—Devise of properties in her favour by her husband—Validity of adoption.

Where a widow in whose favour all the properties had been devised absolutely by her deceased husband adopted a son,

Held, that the adoption was valid.

An adoption is not invalid merely because there is no property over which it can take effect.

T. M. Krishnaswami Aiyar for Appellant.

V. C. Gopalaratnam for Respondent.

N. S.

Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.
16th September, 1927.
S. A. No. 1410 of 1924.

Specific Relief Act, S. 27 (c)—Contract for sale by landlord—Suit for specific performance and possession—Tenants in possession—Decree for possession if can be given.

The plaintiff sued to enforce specifically a contract for sale entered into by a landlord and to recover possession of the properties which were in the actual possession of the tenants. The tenants did not raise the plea of want of notice to quit. They had repudiated the title of the landlord before the institution of the suit.

Held, that the tenants had, by repudiating the landlord's title, become liable to be evicted by the landlord and therefore, under S. 27 (c) of the Specific Relief Act, the plaintiff could exercise that right of the landlord and evict the tenants.

Obiter : The tenants are not entitled, as a matter of right, to take up the plea of want of notice to quit in second appeal when they have not raised it before.

A. Krishnaswami Aiyar and *K. Venkatrama Raju* for Appellant.

K. Kameswara Rao for Respondent.

N. S.

The Offg. Chief Justice, Ramesam and Beasley, JJ.
16th September, 1927.
Ref. Case No. 13 of 1926.

Indian Income-tax Act, Ss. 4 and 10 (9)—Partnership—Assessee doing business with headquarters outside British India but having branches in British India—Agreement with employees in the branches to give them a share of the profits at the end of two

years as their remuneration—If amounts to a partnership—Share of the profits if can be deducted as expenses under S. 10 (9).

A merchant doing business had his headquarters in a place outside British India. He had branches at several places within British India. He entered into an agreement with his employees in the respective places of business whereby they were to serve for two years and receive a share of the profits at the end as remuneration for their services. The agreement provided that the employer was to have the sole control of the business and that the employees were liable to dismissal. There was no provision that the employees should bear any loss incurred in the business.

Held, (1) that the agreement did not constitute a partnership and the assessee was therefore liable to pay tax on the entire profits and not merely on the share of the profits reserved to him under the agreement, and (2) that the assessee was not entitled to deduct the share of the profits due to the employees as expenses under S. 10 (9) of the Income-tax Act.

The Advocate-General for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

The Offg. Chief Justice and Reilly, J.
19th September, 1927.
O. S. A. No. 70 of 1926.

Hindu Law—Joint family property—Presumption—Acquisitions of father.

Where in a Hindu family consisting of father and son the father acquired a Mitta and also other properties and there was no direct evidence before the Court that the said Mitta was treated as joint family property by the father,

Held, that from the fact that the other properties were so treated, no presumption arises that this property was also treated as joint family property so as to give an interest therein to the son.

S. Muthia Mudaliar and *T. D. Srinivasachari* for Appellants.

R. N. Aingar for Respondents.

N. S.

Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.
19th September, 1927.
S. A. No. 1455 of 1924.

Registration Act, S. 50—*Scope of.*

To attract the provisions of S. 50 of the Registration Act, two conditions are necessary. One is that the earlier unregistered conveyance and the later registered conveyance must be both seeking to take effect, not completed transactions. Consequently, where an unregistered sale has been taken by the party as a completed sale and the sale coupled with the delivery of possession has been given effect to completely long before the subsequent registered sale deed is executed, S. 50 does not apply. Secondly, the earlier unregistered deed must be a valid document operative in law, that is, operative even without registration.

T. M. Krishnaswami Aiyar for Appellant.

V. Krishnamachari for Respondent.

N. S.

The Offg. Chief Justice and Reilly, J.
20th September, 1927. A. S. No. 138 of 1924.

Contract Act, S. 70—" Lawful "—Meaning of—Person making the payment if should be interested in making it.

The word " lawful " in S. 70 of the Contract Act indicates that the payment should have been made *bona fide*. It is not necessary that the person making the payment must have been interested in making the payment.

K. V. Krishnaswami Aiyar and *S. Venkatrama Aiyar* for Appellant.

C. Padmanabha Aiyangar for Respondent.

N. S.

Waller, J.
20th September, 1927. I. P. No. 278 of 1926.

Indian Trusts Act, S. 66—Trustee mixing up trust property with his own—Rights of beneficiary—Charge.

Where a trustee wrongfully mixes up the trust funds with his own funds, the beneficiary is entitled to a first charge upon the entire funds so mixed up.

The Advocate-General for Creditor.

S. Doraisami Aiyar for Official Assignee.

N. S.

Madhavan Nair and Curgenven, JJ.
23rd September, 1927. Cr. R. C. No. 372 of 1927.

Criminal Procedure Code, S. 197—Tahsildar acting as a polling officer for a municipal election—Complaint against, of falsifying election records by tampering with voting papers—Sanction if necessary.

A complaint was preferred against a Tahsildar to the effect that he while acting as the polling officer in connection with a municipal election falsified or attempted to falsify the election records by tampering with voting papers.

Held, that previous sanction was not necessary for the lodging of the complaint as the Tahsildar while acting as the polling officer was not acting in his official capacity as Tahsildar.

Two conditions under S. 197 must be fulfilled before a sanction is required. (1) That the person charged with the offence should be a public officer who was not capable of being removed from his office except by the Government. (2) That the offence alleged to have been committed must have been done in discharge of his official duties.

P. Venkataramana Rao for Tahsildar.

The Public Prosecutor for the Crown.

N. S.

Wallace and Tiruvenkata Achariyar, JJ. *22nd September*, 1927. } A. S. No. 370 of 1923.

Civil Procedure Code, O. 26, R. 1—Successive Commissions—Appointment of—Legality.

Successive Commissions for the same purpose should not be ordered except where the Court thinks it necessary to discard the previous Commissioner's report in which case the first Commissioner's report is not evidence in the case.

T. R. Ramachandra Aiyar and *C. V. Harihara Aiyar* for Appellant.

K. P. Krishna Menon and *T. S. Anantaraman* for Respondent.

N. S.

Ramesam and Cornish, JJ. *23rd September*, 1927. } A. S. No. 354 of 1923.

Civil Procedure Code, S. 92—Scheme suit—Compromise by some of the parties or death of some—Effect.

The fact of the compromise by some of the parties to a scheme suit or the death of some of the parties does not preclude the Court in a scheme suit from deciding the question regarding the removal of some of the trustees.

The Advocate-General and *N. Sivaramakrishna Aiyar* for Appellant.

T. R. Ramachandra Aiyar and *T. S. Venkatesa Aiyar* for Respondent.

N. S.

Ramesam and Cornish, JJ. *23rd September*, 1927. } A. S. No. 355 of 1923.

Registration Act, Ss. 17 and 49—Equitable mortgage—List of documents containing a clause at the foot that the documents were deposited as security—Registration if necessary—Oral evidence or subsequent admission—Admissibility—Evidence Act, S. 91.

Where the defendants borrowed monies from the plaintiff on the equitable mortgage by deposit of their title-deeds and the list of the properties whose title-deeds were deposited contained a clause at the foot that the documents were deposited as security for the debt,

Held, that the list evidenced the bargain between the parties and itself created the mortgage and therefore required registration.

50 C. 338 (P. C.) referred to.

Held also that no oral evidence or subsequent admission by the defendant was admissible to prove the mortgage.

A. Krishnaswami Aiyar and *N. Sivaramakrishna Aiyar* for Appellant.

S. Varadachariar and *P. Satyanarayana Rao* for Respondent.

N. S.

N R C

Madhavan Nair and Curgenven, JJ. | C. M. A. No. 69 of 1925.
23rd September, 1927.

Civil Procedure Code, O. 17, Rr. 2 and 3—Scope and applicability.

Order 17, Rr. 2 and 3, Civil Procedure Code, are mutually independent and exclusive.

Per *Madhavan Nair, J.* (*Curgenven, J.*, contra).—Where the plaintiff's pleader applied for an adjournment and, on the adjournment being refused, took no further part in the hearing of the suit, and the plaintiff who was also present applied for an adjournment and, on its being refused, refused to go on with the case, and the suit was dismissed,

Held, that O. 17, R. 2 applied to the case and not R. 3.

41 M. 486 referred to.

S. *Varadachariar* and *K. S. Champakesa Aiyangar* for Appellant.

V. Ramadoss and *R. Purushottam Aiyangar* for Respondent.

N. S.

Srinivasa Aiyangar and Curgenven, JJ. | S. A. Nos. 252 to 257 of 1925.
26th September, 1927.

Madras Estates Land Act, S. 30—Enhancement of rent—Ryot using water from Government tank—Water rate levied from landlord by Government—Landlord's claim to include water rate in the rent—If one for enhancement.

Their Lordships referred the following question to the decision of a Full Bench: Where a ryot uses water from a Government tank for which a water rate is levied on the landlord by the Government and also collected, whether the claim of the landlord to include this water rate in the rent due from the ryot is one for enhancement of rent within the meaning of S. 30 of the Madras Estates Land Act.

A. Krishnasami Aiyar for Appellant.

K. Desikachari for Respondent.

N. S.

Srinivasa Aiyangar and Curgenven, JJ. | S. A. No. 311 of 1926.
26th September, 1927.

Madras Irrigation Cess Act—Inamdar using water from Government tank—Right of Government to impose water cess.

Where there has been no change in the Government tank or the supply channel either by way of deepening the tank or raising the bund or altering the sluices or the supply channel, the Government is not entitled to levy water cess under the Irrigation Cess Act from an inamdar on the ground that a larger extent than the mamool wet land had been cultivated with the water from the tank.

S. *Varadachariar* for Appellant.

P. Venkataramana Rao (*Government Pleader*) for Respondent.

N. S.

Srinivasa Aiyangar and Anantakrishna Aiyar, JJ.
27th September, 1927.
S. A. No. 892 of 1926.

Religious Endowment—Permanent lease—Recognition by successive trustees—Presumption of validity.

The defendants and their predecessors-in-title have been enjoying certain temple lands on permanent lease for more than 60 years past, the origin of such leases being unknown, and several succeeding trustees recognised the said transactions as permanent leases ;

Held, that in the above circumstances, there was a presumption that the alienations were made for justifiable necessity and the onus of proof of the absence of such justifiable purpose lay on the trustee.

46 Bom. 481 (P. C.) and 40 Mad. 402 (P.C.) followed.

S. Varadachariar and *V. Balasundaram Aiyar* for Appellants.

K. S. Desikan for Respondent.

N. S.

Phillips, O. C. J. and Reilly, JJ.
28th September, 1927.
C. M. P. No. 3254 of 1927.

Letters Patent, cl. 15—Judgment—Order remitting the report of the Official Referee back to him.

The order of a Judge on the Original Side of the High Court remitting the report of the Official Referee back to him is not a "judgment" within the meaning of cl. 15 of the Letters Patent.

K. S. Krishnaswami Aiyangar for Appellant.

Vere Mockett for Respondent.

N. S.

Wallace, J.
28th September, 1927.
Cr. A. No. 224 of 1927.

Petroleum Act, S. 5 (1)—Transport license—Halt overnight.

Where a person who has got a license for transport of petroleum halts his consignment for a few hours overnight in a place which is not formally licensed to keep petrol, he is not guilty of an offence under S. 5 (1) of the Petroleum Act.

K. N. Ganapathi for Public Prosecutor.

V. L. Ethiraj for Accused.

N. S.

Srinivasa Aiyangar and Anantakrishna Aiyar, JJ.
28th September, 1927.
S. A. Nos. 979 and 1449 of 1925.

Transfer of Property Act, S. 53—Entire consideration applied to discharge debts—Effect—Transfer to defraud creditors—Transfer partly supported by consideration—If should be set aside wholly.

A transfer of property the consideration of which is utilised entirely in payment of debts of the transferor without any benefit being retained for the transferor may be one intended to defeat creditors.

Where a transaction in fraud of creditors is partly supported by consideration, it cannot be upheld to the extent it is supported by consideration.

30 M. 6 and 37 M. 227 referred to.

46 M. L. J. 125 dissented.

Watrap Subramania Aiyar for Appellant.

S. Muthiah Mudaliar for Respondent.

N. S.

Jackson, J.
29th September, 1927. } C. R. P. No. 527 of 1927.

Civil Procedure Code, O. 22, Rr. 2 and 4—Legal representative already on record—No abatement.

Where the legal representative of a deceased party is already on record as a party O. 22, R. 2, Civil Procedure Code, applies and no application need be put in under O. 22, R. 4.

7 L. 399 and 4 C. L. J. 568 referred to.

K. V. Krishnaswami Aiyar for Petitioner.

S. Varadachariar for Respondent.

N. S.

Jackson, J.
29th September, 1927. } C. R. P. No. 745 of 1927.

Presidency Small Cause Courts Act, Ss. 43 and 47—Order of ejectment—Application for stay subsequently—Maintainability.

An application for stay under S. 47 of the Presidency Small Cause Courts Act after the passing of an ejectment order under S. 43 is maintainable.

17 L. W. 179 referred to.

T. C. A. Anandalwan for Petitioner.

V. Rajagopalachari for Respondent.

N. S.

Phillips, O. C. J.
and Reilly, J.
30th September, 1927. } A. S. No. 173 of 1925.

Hindu Law—Joint family—Mingling of separate income with joint funds—Presumption of jointness—Evidence to rebut.

Where a member of a joint Hindu family has his own separate earnings and they are mingled with the joint family funds, there is a presumption that all the properties are joint family properties and, unless he produces his accounts or other evidence to show that his earnings were kept separately, the earnings must be treated as joint family properties.

50 C. 439 (P. C.) referred to.

C. Narasimhachariar for Appellant.

K. S. Krishnaswami Aiyangar for Respondent.

N. S.

The Chief Justice and Ramesam, J.
3rd October, 1927. } A. S. No. 152 of 1927.

Hindu Law—Joint family business—Debts contracted by manager—Other members taking part in the management of the business—If personally liable.

In the case of a joint family business, the other members of the family cannot be treated as partners in the business merely because they take some part in the management of the business and are not personally liable to discharge the debts contracted by the manager for the business.

K. S. Krishnaswami Aiyangar and *K. Narasimha Aiyangar* for Appellant.

S. Muthiah Mudaliar for Respondent.

N. S.

Srinivasa Aiyangar, J.
3rd October, 1927. } C. R. P. No. 375 of 1927.

Limitation Act, Art. 164—*Substituted service—If amounts to due service.*

"Due service" in Art. 164 of the Limitation Act means "personal service" and does not include "substituted service".

52 M. L. J. 512 not followed.

P. C. Parthasarathi Aiyangar for Petitioner.

L. A. Govindaraghava Aiyar for Respondent.

N. S.

Venkatasubba Rao, J.
4th October, 1927. } C. S. No 42 of 1927.

Madras High Court Original Side Rules, Order V (a)—Scope of—Claim by way of indemnity—When arises—Beneficiary—Right of indemnity against trustee.

Under Order V (*a*) of the new Original Side Rules of the Madras High Court a defendant can agitate his claim by way of indemnity against a third person arising out of the suit transaction. Cases of indemnity may arise under express contract, under implied contract, under statutory provisions, and under fiduciary relationship between the parties.

A *cestui qui trust* has a right of indemnity against the trustee for all losses occurring to him by reason of the trustee's acts amounting to breach of trust in the same way as a trustee has a right of indemnity against the beneficiary for monies spent for the benefit of the beneficiary. Such a claim of the beneficiary is not one by way of damages but one by way of indemnity.

M. Subbaroya Aiyar for Plaintiff.

V. Radhakrishnayya, A. Suryanarayaniah and *R. Tirumala Thathachariar* for Defendants.

N. S.

Ramesam and Cornish, JJ.
4th October, 1927.

A. S. No. 217 of 1923.

Hindu Law—Widow—Decree against—When binds the reversion.

Where in a suit against a Hindu widow as representing her husband's estate, a real defence is available but not put forward and a decree is obtained against her, it is not binding on the reversioner. It is not the law that, unless it is established that there was fraud or collusion between the plaintiff in the prior suit and the widow, the decision therein would be *res judicata* and binding on the reversioner. Gross negligence or laches on the part of the widow in not defending the suit will render the decision not binding on the reversioner.

N. Rama Rao for Appellant.

G. Lakshmanna for Respondent.

N. S.

Phillips and Reilly, JJ.
4th October, 1927.

A. S. No. 357 of 1924.

Interest—Damages for breach of contract—Interest if can be awarded on.

Interest cannot be awarded upon the amount of damages for breach of contract which was agreed to by way of settlement between the parties.

51 M.L.J. 765 (F.B.) referred to.

No interest can be awarded in claims based upon a breach of contract, apart from the Interest Act.

K. Krishnaswami Aiyangar for Appellant.

B. Somayya for Respondent.

N. S.

Devadoss, J.
10th October, 1927.

Cr. Rev. Cases Nos. 202 & 203 of 1927.

Madras Local Boards Act, S. 166—Driver and owner of a motor bus running on a road notified not safe for traffic.

Where a motor bus is plied for hire along a road which is prohibited by notification as not being safe for traffic, the driver of the bus as well as the owner of it both come within the purview of S. 166 of the Madras Local Boards Act.

K. P. Ramakrishna Aiyar for Petitioner.

V. Balarama Aiyar for Respondent.

N. S.

Srinivasa Aiyangar and Anantakrishna Aiyar, JJ.
30th September, 1927.

S. A. No. 152 of 1924.

Court-Fees Act, S. 13—Disposal on a preliminary point—Partition suit—Point as to defendants' exclusive right to property and as to share of plaintiff, if the first point is found against defendants.

Where two points for determination arose before the Lower Appellate Court in a partition suit, *viz.*, whether the defendants had acquired an exclusive right to the property in suit and what was the share to which the plaintiff would be entitled, a one third or a half share, in the event of the first point being held against the defendants, and the Lower Appellate Court decided the case against the plaintiff on the first point itself, without going into the second, and the High Court in second appeal reversed the finding of the Lower Appellate Court on the first and remanded the case to the Lower Appellate Court for final determination,

Held, that the Lower Appellate Court had disposed of the case on a preliminary point for purpose of S. 13 of the Court-Fees Act, and that the Court-fee paid on the second appeal memo. in the High Court could be directed to be refunded.

Ch. Raghava Rao for Appellant.

B. Somayya for Respondents.

N. S.

Srinivasa Aiyangar and Anantakrishna Aiyar, JJ.
30th September, 1927.

S. A. No. 358 of 1924.

Compromise decree—Some of the parties minors on the date of the suit but attaining majority on the date of the decree—Decree representing as minors—Effect.

The plaintiffs brought a suit for setting aside a compromise decree obtained against them as minors represented by their brother as guardian on the grounds that they were majors on the date of the suit and that the guardian was guilty of fraud and negligence. The first Court dismissed the plaintiffs' suit. On appeal the Lower Appellate Court found that the first plaintiff was a major on the date of the decree, if not on the date of the suit and as such that the decree was not binding on both of them.

Held (in Second Appeal by the defendants) (1) that a decree obtained against a person who was a minor on the date of suit but who subsequently attained majority on the date of the decree, treating him still as a minor is not void as there is no procedure prescribed in the Civil Procedure Code which compels a plaintiff to get the minor defendants who attain majority during the course of the proceedings declared as majors.

39 Mad. 1031 and 6 L. W. 272 followed.

20 M. L. T. 479 explained.

(2) that a compromise decree is on the same footing as a contract and hence when on the date of the decree one of the parties was treated as a minor while in fact he was a major, the said decree is not binding on him.

N R C

K. Ramamurti and *K. Kameswara Rao* for Appellant.
B. Jagannadha Doss for Respondent.

N. S.

The Chief Justice and Ramesam, J. 3rd October, 1927. — A. S. No. 155 of 1924.

Contract Act, S. 74—Mortgage bond—Provision for payment in instalments and simple interest—Provision for payment of balance in lump on default with compound interest at same rate.

Where a mortgage bond provided for payment of the debt in successive instalments, for simple interest at a certain rate in the first instance, and in the event of default in the payment of any one instalment, for payment down in a lump sum of the entire balance payable with compound interest at the same rate from the date of default,

Held, the clause was not penal and could be enforced.

T. Ramachandra Rao for Appellant.
Ch. Raghava Rao for Respondent.

N. S.

The Chief Justice and Ramesam, J. 4th October, 1927. — A. S. No. 353 of 1925.

Hindu Law—Bequest to two persons—Joint tenants or tenants-in-common.

A bequest to two persons who are not members of a joint Hindu family does not make them joint tenants but they take it only as tenants-in-common.

11 C. 1 (P. C.) distinguished.
23 C. 670 (P. C.) followed.
K. Kameswara Rao for Appellant.
Ch. Raghava Rao for Respondent.

N. S.

Jackson and Anantakrishna Aiyar, JJ. 7th October, 1927. — S. A. No. 716 of 1924.

Inam—Enfranchisement—Ejectment suit by enfranchisee—Onus of proof.

Where a vetti seri inam was enfranchised and the plaintiff who bought the interest of one of the enfranchisees sued in ejectment persons in possession.

Held, that the onus of proving the right to eject, *viz.*, that the original grant was of both the warams, lay on the plaintiff.

49 M. L. J. 602 and 51 M. L. J. 510 followed.
44 M. 643 (P. C.) referred.
V. Ramadoss for Appellant.
Ch. Raghava Rao and *V. Krishna Mohan* for Respondent.

N. S.

Ananthakrishna Aiyar, J.
10th October, 1927.

C. R. P. No. 999 of 1926.

Civil Procedure Code, O. 1, R. 8—Scope of.

A Court should not refuse leave under O. 1, R. 8, Civil Procedure Code, merely on the ground that the persons interested in the trust as representing whom the plaintiffs applied for leave are not numerous, or that there is a difference prevailing among the persons. The consent of all the persons is not necessary for the purpose of instituting a representative suit.

T.L. Venkatarama Aiyar for Petitioner.

T.M. Ramasami Aiyar for Respondent.

The Chief Justice and Anantha-krishna Aiyar, J.
11th October, 1927.

A. S. No. 8 of 1925.

Interest—Sale of goods—Suit for price of—Whether interest payable—Ceylon Ordinance (II of 1918)—Form of promissory note—Interest column not filled up—Effect.

The plaintiff, a dealer in rice and cement, supplied goods to defendant from time to time and got promissory notes for the price. Finally the previous promissory notes were consolidated and a final promissory note was executed in the prescribed printed form but the space for interest was not filled up. The plaintiff brought a suit for price on the dealings and on the promissory note in India.

Held, (1) assuming that the promissory note was invalid under the Ceylon Ordinance an action lay on the original dealings in India,

(2) that, on the construction of the promissory note, there was no contract for payment of interest as the same was negatived by the space for interest not being filled, and

(3) that, further, the plaintiff was not entitled to any interest from the date of the promissory note but only from the date of the plaint, apart from contract for such payment and the provisions of the Interest Act.

K. S. Krishnaswami Aiyangar and *V. Rajagopala Aiyar* for Appellants.

M. Patanjali Sastri and *S. Jagadisa Aiyar* for Respondents.

Wallace and Tiru-venkata Achariyar, JJ.
11th October, 1927.

C. R. P. No. 114 of 1923.

Madras Estates Land Act, S. 3 (2)—Estate—Post-settlement inam—Sale for arrears of revenue and purchase by Government—Effect—Grant not of the whole village—Existence of minor inams—Effect—Burden of proof.

Where a post-settlement inam was sold for arrears of revenue and purchased by the Government,

Held, that, the zamindari having been put an end to by the purchase, S. 3 (2) (*a*) and (*e*) of the Madras Estates Land Act which implies the continued existence of the zamindari did not apply.

S. 3 (2) (*d*) of the Act applies even though the grant is not of the whole village due to the existence of minor inams.

Per *Wallace, J.*—Where, in a suit for ejectment, the defendant raises the plea that the lands in respect of which the suit is brought are lands in an estate and the Civil Court has no jurisdiction to entertain the suit, the initial onus of proof is on the defendant to prove that the suit lands relate to an estate. It may be that, after this initial onus is discharged, the plaintiff should establish his right to eject the defendant.

Per *Tiruvenkata Achariyar, J.*—In such a suit there is no presumption either way.

Case-law reviewed.

S. Varadachariar and *Ch. Raghava Rao* for Petitioner.
A. Krishnaswami Aiyar and *P. Satyanarayana Rao* for Respondent.

N. S.

Phllips and Reilly, JJ.
12th October, 1927.
A. S. No. 252 of 1925.

Word—Santhathi—If includes adopted son.

In the case of a devise to females the word "Santhathi" does not include "adopted son" as the adoption can be made only to the husband.

Ch. Raghava Rao for Appellant.

B. Somayya and *E. Krishnamurthi* for Respondent.

N. S.

The Chief Justice and Anantakrishna Aiyar, J.
12th October, 1927.
C. M. P. No. 2992 of 1927.

Arbitration Act, Ss. 1 and 14—Award—When can be set aside by Court—Finding of arbitrator—Jurisdiction of Court to go into.

Unless there has been misconduct on the part of the arbitrator or the award was improperly procured, the Court has no jurisdiction to rescind the award under S. 14 of the Arbitration Act. The Court has no power to investigate whether there is evidence to support the finding of the arbitrator or not.

Per *Anantakrishna Aiyar, J.*—The rules of evidence as laid down in the Evidence Act do not govern arbitration proceedings.

Nugent Grant for Appellant.

Respondent unrepresented.

N. S.

Madhavan Nair and Reilly, JJ.
12th October, 1927.

Cr. A. No. 388 of 1927.

Indian Penal Code, S. 292 as amended by Act XVIII of 1925—Omission of the word "printed"—Effect.

Where a person was charged, after the coming into force of Act XVIII of 1925, with having *printed* an obscene publication, and tried and convicted of an offence under S. 292, I.P.C.,

Held, that the word "printed" having been omitted from the Section by the Amending Act of 1925, the charge against the accused was illegal and the conviction should be set aside.

J. C. Adam (Public Prosecutor) for Crown.

G. Lakshmanna for Accused.

N. S.

Srinivasa Aiyangar, J.
12th October, 1927.

C. R. P. No. 599 of 1927.

Civil Procedure Code, O. 38, Rr. 5 and 6 and O. 43, R. 1 (q)—Application for attachment before judgment—Petition closed after recording the undertaking by the defendant not to alienate his properties—Appeal—If lies.

The plaintiff applied to the Court for an order to direct the defendant to furnish security for the amount claimed in the suit or to attach his properties. The Court passed an order recording the undertaking of the defendant not to alienate his properties and closed the petition.

Held, that this order fell under O. 38, R. 6 (2), C. P. C., and consequently was appealable under O. 43, R. 1 (q.)

3 R. 307 and 50 C. 215 referred to.

K. Bhashiam Aiyangar and *T. R. Srinivasan* for Petitioner.

N. R. Govindachari for Respondent.

N. S.

Devadoss, J.
12th October, 1927.

C. R. P. No. 1204 of 1925.

Limitation Act, S. 19—Statement that debtor would pay the amount at a future fixed period—Suit filed beyond the period of limitation from the date of signing the statement but within the period of limitation from the date fixed—If barred.

Where a debtor wrote to the creditor acknowledging that a particular amount was due to the creditor on that date and promising to pay that amount in the first week of January next.

Held, that a suit by the creditor filed more than 3 years from the date of the signing of the letter but within 3 years from the first week of January fixed by the letter was barred by limitation.

P. N. Appusami Aiyar for Petitioner.

T. M. Ramaswami Aiyar for Respondent.

N. S.

Jackson and Anantha-krishna Iyer, JJ.
12th October, 1927.
S. A. No. 135 of 1924.

Registration Act, Ss. 17 and 49—Unregistered sale-deed—Admissibility to prove the nature of possession of the vendee—Mortgagee getting unregistered sale-deed—Suit for redemption of mortgage—Mortgagee if can rely upon the sale deed—Transfer of Property Act, S. 6b.

An unregistered sale deed is admissible in evidence to prove the nature of the possession of the vendee, namely, that the vendee claimed title as absolute owner adversely to the vendor. Any unilateral assertion of hostile right by the mortgagee who enters into possession of the mortgaged properties will not have the effect of extinguishing the right of redemption of the mortgagor. But if the mortgagee takes an unregistered sale-deed from the mortgagor it will be an "act of the parties" which will have the effect of extinguishing the right of redemption under S. 60 of the Transfer of Property Act.

Case law reviewed.

M. S. Venkatrama Iyer for Appellant.

C. A. Seshagiri Sastri for Respondent.

N. S.

Phillips and Reilly, JJ.
12th October, 1927.
A. S. No. 77 of 1925.

Contract Act, S. 23—Champertous agreement—Applicability to India—Tests.

The English law of champerty is not applicable to India. Where the defendant entered into an agreement with the plaintiff who was her relation to give to the plaintiff ¼th of the properties that she might recover in a suit by her against her brother, in consideration of the plaintiff assisting her in the litigation with money and services.

Held, that the agreement was not extortianate but was more in the nature of a family arrangement.

G. Lakshmanna for Appellant.

Ch. Raghava Rao for Respondent.

N. S.

Madhavan Nair and Reilly, JJ.
13th October, 1927.
Crl. Rev. Case No. 335 of 1927.

Indian Motor Vehicles Act, Ss. 11 and 16 and Rule 27 (c)—Scope of the Rule—If ultra vires—"*Accident*"—*Meaning of.*

The word "accident" in Rule 27 (c) of the Rules framed under the motor Vehicles Act means accidents to the driver and the occupants or to the car, and does not include accidents to other cars or to the public which the driver of the motor vehicle came to know in the course of his driving. So construed, the Rule falls within the scope of S. 11 (2) (i) of the Act and is not *ultra vires*.

B. C. Sankaranarayana for Accused.

K. N. Ganapati for the Public Prosecutor for Crown.

N. S.

Devadoss, J.

13th October, 1927.

C. R. P. No. 1356 of 1927.

Landlord and tenant—Lease for one year—Lessee relinquishing possession before the expiry of the year—Liability for rent for the remaining period.

Where a lease was taken for a period of one year and the lessee who had entered into possession vacated the premises after 4 months and gave a notice to the landlord that he gave up the lease, but the lessor refused to accept the termination of the lease and it appeared that the landlord had offers from other persons to take up the property on lease on higher rent but that he neglected to lease the property to such persons,

Held, that the landlord was not entitled to any damages against the lessee.

P. R. Ramakrishna Iyer for Petitioner.

P. S. Ramachandra Iyer for Respondent.

N. S.

Devadoss, J.

14th October, 1927.

Crl. Rev. Case No. 401 of 1927.

Madras City Police Act, S. 76—Scope.

S. 76 of the Madras City Police Act is not restricted in its applicability to the actual driver of a motor bus, but also applies to the owner of the bus or the person who has got the licence, and the fact that the person in whose name the licence had been obtained was not actually present in the bus when it was driven along a road prohibited for traffic by the licence is immaterial.

N. S. Srinivasa Iyer for Petitioner.

P. Govinda Menon for Crown Prosecutor.

N. S.

Devadoss, J.

14th October, 1927.

Crl. Rev. Case No. 510 of 1927.

Madras Local Boards Act, Ss. 222 and 223—Failure to take out licence—Prosecution for—Limitation for commencing.

Where the accused was charged by a Taluk Board for failure to take out a potter's licence for the period commencing from the year 1924 and the complaint was filed in November 1926,

Held, that under S. 223 of the Madras Local Boards Act, the period of limitation was 3 months from the expiry of the year during which the licence, if granted, would have enured and consequently the complaint relating to the omission to take out the licence for the years 1924 and 1925 was barred.

S. 223 and not S. 222 is applicable to cases of failure to get licence.

S. Soundararaja Aiyangar for complainant and the *Public Prosecutor* for Crown.

N. S.

N R C

Devadoss, J.

14th October, 1927. } Crl. Rev. Case No. 527 of 1927.

Criminal Procedure Code, S. 247—Summons case—Complainant absent—Son representing father dead and getting himself substituted—No further steps taken—Magistrate proceeding with the trial and convicting accused—Legality.

Where in a summons case the complainant was absent on the day of the hearing and his son turned up and represented that his father was dead and that he be substituted in his place and the Taluk Magistrate gave him leave to do so but the complainant's son did not take any steps and the Magistrate proceeded with the trial of the case, examined witnesses and convicted the accused which conviction was upheld in appeal by the joint magistrates,

Held (in revision), that the conviction was bad as the Magistrate should have acquitted the accused under S. 247 of the Crl. P. Code.

19 C. W. N. 334, referred to.

K. Kameswara Rao and *K. Subbarama Iyer* for Petitioners.

The Public Prosecutor (Mr. J. C. Adam) for Crown

N. S.

Srinivasa Aiyangar and Reilly, JJ.

17th October, 1927. } S. A. No. 903 of 1923.

Court-fee—Ejectment suit against tenant—Defendant claiming value of improvements—Decree by first court for ejectment conditional on paying compensation—Appellate Court holding defendant to be licensee and directing ejectment without compensation—Second appeal by defendant—If Court-fee should be paid on amount of compensation claimed.

Where a decree in ejectment was passed against a tenant conditional on paying him compensation in respect of the buildings erected by him and on appeal the Sub-Judge holding that the defendant was a mere licensee ordered ejectment without paying value of the improvements, and the defendant preferred a second appeal and paid Court-fees only on the valuation of the land without paying separate Court-fee on the compensation amount claimed,

Held, that the Court-fee paid was proper.

23 M. 84, 20 M. L. J. 121 and 45 M. 246, referred to.

The Malabar Tenants' Improvements Act does not apply to a mere licensee.

B. Sitaram Rao and *A. R. Sundara Iyer* for Appellant.

K. P. M. Menon and *P. Govinda Menon* for Respondent.

N. S.

Phillips and Ramesam, JJ.

18th October, 1927. } A. S. No. 89 of 1925 & 288 of 1926.

C. P. C., S. 92—Interest—Residents of the place—Feeding charity—Necessity to go and ask for food in the chatram.

Residents of a place where a chatram in which feeding charity is being carried on, is situated have got sufficient interest to bring a suit under S. 92, C. P. C. It is not necessary that they should have had any necessity to go and ask for food in the chatram.

42 M. 360, dist.

T. R. Ramachandra Iyer and *S. R. Dikshit* for Appellant.

K. V. Krishnaswami Iyer and *K. G. Srinivasa Iyer* for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
19th October, 1927. } C. M. S. A. No. 59 of 1927.

Limitation Act, Art. 182—Execution sale of properties as belonging to the judgment-debtor—Delivery of possession to auction-purchaser—Subsequent dispossession by real owner—Suit by auction-purchaser against real owner—Dismissal of suit, Court holding properties did not belong to the judgment-debtor—Subsequent suit by auction-purchaser against decree-holder and judgment-debtor for refund of purchase-money—Decree given against decree-holder—Purchase-money collected in execution—Subsequent execution petition by decree-holder to execute his decree—Limitation.

Certain properties were sold in execution of a decree as belonging to the judgment-debtor and purchased by a third person and were delivered to him. Subsequently the auction-purchaser was dispossessed by another person who claimed to be the real owner. The auction-purchaser filed a suit against him but the suit was dismissed on the ground that the properties did not belong to the judgment-debtor but belonged to the other person. Subsequently, the auction-purchaser filed a suit against the decree-holder and the judgment-debtor for refund of the purchase-money and a decree was passed against the decree-holder. In execution of this decree, the purchase-money was recovered by the auction-purchaser from the decree-holder. Then, the decree-holder filed a petition for executing his own decree. This petition was filed more than 3 years from the date of the decree obtained by the auction-purchaser against the decree-holder but within 3 years from the date of the refund of the purchase-money. It was also more than 12 years from the date of the original decree.

Held, (1) that the starting point of limitation for the Execution Petition was the date of the refund of the purchase-money by the decree-holder to the auction-purchaser and *not* the date of the decree obtained by the auction-purchaser for refund of the purchase-money;

30 M. 209, referred to; and

(2) the present Execution Petition cannot be considered to be a continuation or revival of the old Execution Petition, inasmuch as the properties in respect of which a sale was asked for in the two petitions were entirely different.

P. Somasundaram for Appellant.

C. Sambasiva Rao for Respondent.

N. S.

Madhavan Nair and Reilly, JJ. — Crl. App. No. 540 of 1927.
19th October, 1927.

Madras Local Boards Act, S. 3 (18)—Public road—Road poromboke beyond the limits of the road used by the public for passage.

The words "public road" in S. 3 (18) of the Madras Local Boards Act includes the extent of the road *poromboke* between the limits of the metalled road used by the public for passage to and fro and the property of the adjoining owner.

The Public Prosecutor for Crown.

T. S. Krishnaswami (amicus curiæ) for Accused.

N. S.

Devadoss, J. — C. R. P. No. 375 of 1926.
19th October, 1927.

Madras Estates Land Act, S. 192—C. P. Code, O. 21, Rr. 58 to 63—If apply to rent suits under the Act.

The provisions of the C. P. Code relating to claim petitions, *viz.*, O. 21, Rr. 58 to 63 are applicable to rent suits under the Madras Estates Land Act.

K. Kameswara Rao for Petitioner.

M. Venkatasubbiah for *A. Krishnaswami Iyer*, for Respondent.

N. S.

Devadoss, J. — C. R. P. No. 400 of 1926.
19th October, 1927.

Execution—Insolvency of decree-holder—Subsequent assignment of decree by decree-holder—Right of assignee to execute the decree—Right of Official Receiver to impeach the validity of the assignment.

A decree-holder assigned the decree after he was adjudicated an insolvent. The assignee applied for recognition of the assignment and execution of the decree. Both the decree-holder and the judgment-debtor who were served with notice did not raise any objection but the Official Receiver raised the plea that the assignment was not valid.

Held, (1) that the Official Receiver had the *locus standi* to object to the assignment ; and

(2) that the assignment having been made by the decree-holder after the adjudication passed no interest to the assignee.

N. Kunchithapatham for Petitioner.

A. C. Sampath Aiyangar for Respondent.

N. S.

Devadoss, J. — C. R. P. No. 148 of 1926.
19th October, 1927.

Religious Endowment Act (1925)—If retrospective.

The provisions of the Religious Endowment Act of 1925 are not retrospective and the right of suit vested in persons prior to the passing of the Act is not affected.

K. Krishnaswami Aiyangar and *T. R. Arunachalam* for Petitioner.

T. R. Ramachandra Iyer and *D. V. Neelamegachariar* for Respondent.

N. S.

The Chief Justice and Anantha-krishna Aiyar, J. 20th October, 1927. — A. S. No. 227 of 1926.

Limitation Act, Art. 118—Will authorising widow to adopt and directing all the properties except the house to be divided between the widow, daughters and adopted son in defined shares—Adoption by widow—Alienation by the adoptive mother and adopted son of the house—Suit by reversioner impeaching the alienation—Limitation.

A testator authorised his widow to adopt and directed that all his properties except the house should be divided into shares and distributed to his widow, daughters and adopted son. The widow adopted a son. The adopted son and the adoptive mother alienated the house. Within 4 years from the date of the alienation but after 20 years from the date of the adoption the reversioner brought a suit impeaching the alienation.

Held, that the suit was barred by limitation under Art. 118 of the Limitation Act having been brought more than 6 years after the date of adoption, inasmuch as, the moment the adoption was made, it threatened the reversionary rights in view of the fact that the adopted son was given a share in the properties of the deceased.

36 I. C. 255, referred to.

B. Satyanarayana for Appellant.

G. Lakshmanna for Respondent.

N. S.

Srinivasa Iyengar, J. 20th October, 1927. — C. R. P. No. 818 of 1927.

Practice—Appeal from order in insolvency—Necessity of notice to respondent before allowing appeal.

Where a District Court allowed an appeal from an order of the Sub-Court dismissing an application by the insolvent for discharge as out of the time specified by the Court, without giving notice to the creditors or to the Official Receiver,

Held, that the procedure of the District Court was irregular, as no Court has any right to allow an appeal without giving notice to the parties affected by the same.

E. Krishna Iyer for Petitioner.

V. Sambandam Chetty for Respondent.

N. S.

Madhavan Nair and Reilly, JJ. 20th October, 1927. — Crl. Rev. Case No. 559 of 1927.

Indian Penal Code, Ss. 467 and 471—Suit in which forged document put forward—Persons not parties—Complaint for

offence of fabrication of document against—Power of Court to lodge.

A Court has got power to prefer a complaint in respect of offences alleged to have been committed before it against persons who are not parties to the suit. So far as the parties to the suit are concerned, the Court must be taken to have acted as a Court in preferring the complaint. So far as the persons not parties to the suit are concerned, the Court must be taken to have acted as a public servant lodging a complaint and it is not necessary that such a complainant should have been examined on oath.

C. Sidney Smith for Accused.

The Public Prosecutor for Crown.

N. S.

Philips and Ramesam, JJ.
20th October, 1927. — A. S. No. 342 of 1926.

Civil Procedure Code, S. 92—Scheme decree—Modification—If can be made by an application.

Where a decree has been made settling a scheme in a suit under S. 92, C P.C., any modification of it can be made only by a fresh suit and not by any application in the same suit.

B. Somayya for Appellant.

K. Krishnasami Iyengar, V. C. Veeraraghavan and *T. K. Srinivasathathachariar* for Respondent.

N. S.

Srinivasa Aiyangar, J.
20th October, 1927. — C. R. P. No. 785 of 1927.

Civil Procedure Code, O. 33, R. 1 and O. 22, R. 3—Application to sue in forma pauperis*—Death of applicant—Right of legal representative to continue the application.*

An application to sue *in forma pauperis* cannot be continued by the legal representative of the applicant after the death of the applicant, as the right is a personal one. But the legal representative may undertake to pay the proper court-fees and continue the suit in which case the date of the filing of the application will be deemed to be the date on which the plaint was presented.

P. Panini Rao for Petitioner.

N. S.

Madhavan Nair and Jackson, JJ.
20th October, 1927. — C. M. A. No. 377 of 1926.

Provincial Insolvency Act (V of 1920), S. 17—Debtor's petition—Death of the debtor before adjudication—Jurisdiction of Court to adjudicate.

The Insolvency Court has got power to adjudicate a person as insolvent on his petition, even though the petitioner died subsequent to the filing of the petition.

N. Kunchithapatham Iyer for Appellant.

R. Krishnaswami Aiyangar for Respondent.

N. S.

Devadoss, J.
19th October, 1927.
C. R. P. No. 1234 of 1926.

Madras Estates Land Act, Ss. 74 and 75 (7)—Application for appraisement of rent—Award of Revenue Inspector—Order of confirmation by Sub-Collector—Appeal to District Collector—If lies—Revision—Appeal to District Court.

No appeal lies to the District Collector against an order of the Sub-Collector confirming an award of the Revenue Inspector in an application for appraisement of rent under S. 74 of the Madras Estates Land Act.

Quære :—Whether an appeal does not lie to the District Court against an order of the Sub-Collector confirming the award, as the said order tantamounts to a decree for arrears of rent under S. 75, cl. 7 of the Estates Land Act ?

A. Ramaswami Ayyangar for Petitioner.

S. Nagaraja Ayyar for Respondents.

N. S.

Kumaraswami Sastri and Wallace, JJ.
20th October, 1927.
C. M. A. No. 248 of 1925.

Religious Endowment—Dedication to trust—Deed not providing for devolution of trustees after the death of the founder—Effect—Right to nominate trustees—In whom vests—Power given jointly to two persons—Death of one—Other when entitled to exercise.

Where by a deed certain properties were dedicated to charities for the worship of an idol by two brothers and it was provided that one of the brothers must be in management and possession of the properties but there was no provision as to the devolution or mode of appointment of trustees after the death of the founders.

Held, that, on the death of the brother who managed the properties, the other brother alone was not entitled to appoint or nominate a trustee but the right of nomination devolved upon both the surviving brother and the heirs of the other deceased brother who were the founders of the trust.

S. T. Srinivasagopalachari for Appellant.

B. Sitarama Rao for Respondents.

N. S.

Srinivasa Aiyangar and Jackson, JJ.
21st October, 1927.
S. A. Nos. 29 and 30 of 1925.

Madras Hereditary Village Offices Act, S. 6—Construction of—Right of members of family to insist upon selection being made from a particular group of persons—Suit in Civil Court—Maintainability.

In cases where new village officers are created by virtue of regrouping, amalgamation or division of villages, S. 6 of the Madras Hereditary

Village Offices Act no doubt casts an obligation upon the Revenue authorities to make a selection from the members of the families of the last holders of the offices which have been abolished. But it does not confer any right on the members of the families to insist upon such a selection and a suit by a member of the family for a declaration that the defendant was not properly appointed in accordance with the terms of the section is not maintainable.

T. R. Ramachandra Ayyar for Appellant.

P. Venkataramana Rao for Government.

M. Krishna Bharathi for Respondent.

N. S.

Devadass, J.
25th October, 1927. } C. R. P. No. 413 of 1926.

Civil Procedure Code, Sch. II, para. 15—*Legal misconduct—Arbitrator deciding on local inspection but not on evidence.*

Failure to take evidence by an arbitrator, while the terms of reference to him do not specifically empower him to dispense with it, amounts to legal misconduct, and the award based merely upon local inspection cannot stand.

K. S. Ramabhadra Ayyar for Petitioner.

T. R. Srinivasan for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
26th October, 1927. } C. M. P. No. 3590 of 1927.

Letters Patent (Amended), cl. 15—*Order on application for stay of execution pending civil revision petition—If appealable.*

No appeal lies from an order passed on an application for stay of execution pending civil revision petion.

P. G. Krishna Ayyar for Petitioner.

K. Ramachandra Ayyar for Respondent.

N. S.

Waller and Madhavan Nair, JJ.
28th October, 1927. } C. M. P. No. 49 of 1927.

Civil Procedure Code, S. 110—*Substantial question of law—Point concluded by the Full Bench decision of the High Court—Different view of the other High Courts—Valuation of subject-matter of suit—Mesne profits subsequent to date of suit—If can be taken into account.*

The question of the maintainability without the sanction under S. 92, C. P. C., of a suit between two persons each claiming to be the lawful trustee of a religious endowment is not a "substantial question of law" for purposes of leave to appeal to His Majesty in Council under S. 110, C. P. C., concluded as it is by a Full Bench decision of the High Court reported in I. L. R. 45 Mad. 113, whatever the view of the other High Courts on the point may be.

Quære:—Whether mesne profits subsequent to the date of the suit for recovery of possession can be taken into account in valuing the subject-matter of the suit in the Court of first instance under S. 110, C. P. Code.

43 M. L. J. 622 and 39 Mad. 843 referred to.

P. Satyanarayana Rao for Petitioner.

Ch. Raghava Rao for Respondents.

N. S.

Kumaraswami Sastri and Wallace, JJ.
28th October, 1927.

C. M. A. No. 444 of 1926.

Provincial Insolvency Act, S. 7—Swasthiwachakam service inam land—Rents and profits from—Power of Court to make an order vesting them in the Official Receiver.

Though a Swasthiwachakam service inam land is not attachable in execution of a decree, it does not follow that the rents and profits accruing thereon are not liable for attachment, and there is nothing to prevent a Court from realising the rents and profits from the lands for any particular year by the appointment of a receiver and, after paying enough out of them to the Inamdar for his subsistence, from appropriating the balance towards the satisfaction of the decree.

45 Mad. 620 (F.B.) referred to.

49 M. L. J. 244 (P.C.) followed.

It is therefore competent to an Insolvency Court under the Provincial Insolvency Act by adopting the same course to vest the balance of rents and profits accruing due, in the hands of the Official Receiver for the benefit of the creditors, after making the necessary allowance for the Inamdar.

K. Subba Rao for the *Hon'ble Mr. V. Ramadoss* for Appellant.

Ch. Raghava Rao and *S. Ramachandran* for Respondents.

N. S.

Kumaraswami Sastri and Wallace, JJ.
1st November, 1927.

C. M. A. No. 195 of 1927.

Provincial Insolvency Act, S. 43—If mandatory or directory—Court's power to extend time originally fixed for applying for discharge.

The provisions of S. 43 of the Provincial Insolvency Act are mandatory, and not merely directory, and it is not open to the Insolvency Court to extend the time for an insolvent to apply for discharge after the expiration of the time originally fixed.

4 Pat. 51 and Wallace, J.'s view in 19 L. W. 418 followed.

Krishnan, J.'s view in 19 L. W. 418 dissented from.

51 M. L. J. 209, 51 M. L. J. 60 and 51 Cal. 337 referred to.

Ch. Raghava Rao for Appellant.

A. V. Krishna Rao for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
3rd November, 1927.

C. M. A. No. 362 of 1926.

Civil Procedure Code, O. 43, R. 1 (w) and O. 47, Rr. 1 and 7—Order granting review—Appeal—When maintainable—Review on the ground that a ruling was not cited at the original hearing—If can be granted—"Error apparent on the face of the record"—Meaning of.

No appeal lies against an order granting review on the ground that a certain ruling of a High Court was not cited on the previous occasion.

Case-law reviewed.

A legal doctrine of a High Court is " new and important matter " within the meaning of O. 47, R. 1, C. P. Code.

The " error apparent on the face of the record " in O. 47, R. 1 must be an error apparent on a perusal of the judgment itself and not by reference to extraneous matters.

Case-law reviewed.

K. Bhashyam Ayyangar and *T. R. Srinivasan* for Appellant.

A. Ramaswami Ayyangar for Respondent.

N. S.

Devadoss, J.
26th October, 1927.

C. R. P. No. 630 of 1926.

Madras Local Boards Act, Ss. 93 and 228—Professional income—Gross income or net income—Suit for recovery of excess professional tax collected on the ground that the tax was levied on the gross income—Jurisdiction of civil court.

The words " professional income " in section 93 of the Madras Local Boards Act mean the net income and not the gross income. 27 M. 547 referred to.

A suit for recovery of excess professional tax collected by the Union Board under the Madras Local Boards Act, on the ground that the tax was improperly levied on the gross income instead of the net income, is maintainable in the civil court, as the dispute relates to the basis of the assessment and not to the quantum of the assessment.

C. A. Seshagiri Sastri for Petitioner.

T. M. Krishnasami Ayyar for Respondent.

N. S.

Srinivasa Aiyangar and Jackson, JJ.
26th October, 1927.
S A. No. 620 of 1926.

Hindu Law—Joint family—Alienation by manager—Substantial portion of consideration not for legal necessity—Form of decree—Alienation if should be set aside.

It is not an inflexible rule of law that, when a substantial portion of consideration in the case of an alienation by the manager of a joint Hindu family is not supported by legal necessity, the alienation should be set aside in its entirety. It is in the discretion of the Court to set aside the alienation or not. Where it was found that an alienation of about 6 and odd acres of land was made for Rs. 900 and odd, out of which, Rs. 400 and odd was for necessity, and that the properties comprised in the alienation were capable of division,

Held, that the entire alienation should not be set aside but should be upheld in respect of one-half of the properties.

16 L. W. 595 referred to.

N. Swaminatha Aiyar for Appellant.

V. Suryanarayana for Respondent.

N. S.

Devadoss, J.
26th October, 1927.
C. R. P. No. 70 of 1926.

Madras District Municipalites Act, S. 354—Enhancement of tax without notice—Suit for refund—Jurisdiction of Civil Court.

A suit in the Civil Court for refund of enhanced tax on the ground that the enhancement was made without notice is maintainable. The Civil Court has jurisdiction in cases where the provisions of the Act are not substantially complied with.

K. S. Desikan for Petitioner.

Sundaralingam for Respondent.

N. S.

Srinivasa Aiyangar and Jackson, JJ.
28th October, 1927.
S. A. No. 1322 of 1924.

Partnership—Working partner—Right to settle debt due to the partnership.

A working partner is entitled to settle a debt due to the partnership and such a settlement is binding on the partnership.

C. S. Venkatachariar for Appellant.

K. Varadachari for Respondent.

N. S.

Devadoss, J.
28th October, 1927.
Cr. R.C. Nos. 402 and 403 of 1927.

Madras Local Boards Act, S. 221—Prosecution for non-payment of profession tax—Power of magistrate to go into the basis of the assessment or the quantum of it—Magistrate acting under—If a Criminal Court—Criminal Procedure Code, S. 435.

N. R. C

A magistrate before whom a prosecution is launched for non-payment of the profession tax under S. 221 of the Madras Local Boards Act has no power to go into the basis of the assessment of the tax or the quantum of it. A magistrate acting under S. 221 and reducing the tax levied by the Taluk Board acts as a Criminal Court and his order can be revised by the District Magistrate under S. 435 of the Criminal Procedure Code.

N. S. Srinivasa Aiyar for Complainant.

The Public Prosecutor for the Crown.

R. Visvanatha Aiyar for Accused.

N. S.

Devadoss, J.
31st October, 1927. — C. R. P. No. 1105 of 1926.

Practice—Defendant declared ex parte*—Suit pending—Right to appear at a later stage.*

In a pending suit a defendant, who was declared *ex parte* at a hearing, is not precluded from appearing at a later stage of the suit and continue it.

K. S. Desikan for Petitioner.

M. Patanjali Sastri for Respondent.

N. S.

Devadoss, J.
31st October, 1927. — C. R. P. Nos. 245 to 247 of 1927.

Civil Procedure Code, S. 47 and O. 21, R. 90—Application to set aside sale in execution of rent decree—Appeal.

An order on an application to set aside a sale held in execution of a decree passed by a Revenue Court on grounds not covered by O. 21, R. 90 of the C. P. C. is appealable under S. 47, C. P. C., as the section is not made inapplicable by S. 192 of the M. E. L. Act.

E. Vinayaka Row for Petitioner.

M. S. Venkatarama Aiyar and *S. Rangaswami* for Respondent.

N. S.

Jackson and Ananthakrishna Aiyar, JJ.
31st October, 1927. — S. A. No. 915 of 1926.

Contract Act, S. 70—Irrigation tank supplying water to the lands of the plaintiff and defendants—Repairs effected by the plaintiff—Defendants benefited by the repairs—Right of plaintiff to contribution in respect of the expenses of repairs.

An irrigation tank which supplied water to the lands belonging to the plaintiff and the defendants was owned by the plaintiff. It breached in one year with the result that wet cultivation could not be carried on. The plaintiff spent money and closed up the breaches and the result of it was that the lands of the plaintiff and the defendants could be cultivated with wet crops as before the breaches. The plaintiff sued to recover half the amount of the expenses by way of contribution.

Held, that, as the tank belonged to the plaintiff and as the plaintiff denied the right of the defendants to enter upon the tank, it cannot be said that the plaintiff did the repairs "*for the defendant*" within the meaning of S. 70 of the Contract Act and that therefore the plaintiff was not entitled to contribution.

Per *Ananthakrishna Aiyar, J.*—To constitute an act as having been done *for* another, there must be a legal duty to do that act on the part of the other which the law could compel him to perform. No right to contribution arises unless there is such legal duty.

A. Krishnaswami Aiyar for Appellant.

S. T. Srinivasagopalachari for Respondent.

N. S.

Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.
1st November, 1927.
S. A. Nos. 329 and 330 of 1926.

Indian Companies Act, S. 38—Purchaser of shares in limited Company in Court auction—Suit by purchaser to direct the Company to register the shares in his name—Maintainability—Right to have his name registered.

In execution of a decree the shares in a company standing in the name of the judgment-debtors' father were sold in Court auction. The auciton-purchaser applied to the company to register the shares in his name. The company pleaded that the only person whose title they were bound to recognise was the executor or administrator of the deceased under the Articles of Association and further that they had a discretion in the matter.

Held (1) that the application contemplated by S. 38 of the Companies Act was not the only remedy and did not exclude the ordinary right of suit of a party; and that therefore the suit was maintainable, and (2) that the Company was bound to register the names of the auction-purchaser as owner of the shares and could not arbitrarily refuse to do so.

4 Ch. App. 20 referred to.

S. Varadachariar and *S. T. Srinivasagopalachariar* for Appellant.

A. Krishnaswami Aiyar and *T. M. Ramaswami Aiyar* for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
1st November, 1927.
C. R. P. No. 1113 of 1925.

Civil Procedure Code, S. 2 (20)—Civil Rules of Practice, Rr. 2 (11) and 81—"Signed"—Meaning of—Affixture of facsimile by a party capable of writing his signature in vakalats and affidavits.

The word "signed" in R. 81 of the Civil. Rules of Practice includes stamping or affixing of facsimile and consequently a vakala

or affidavit containing the facsimile of a party who is capable of writing his signature is not invalid.

3 A. 575 followed.

S. Sundararaju Aiyangar for Petitioner.

Respondent unrepresented.

N. S.

Phillips and Srinivasa Aiyangar, JJ.
3rd November, 1927. — C. M. A. No. 197 of 1927.

Civil Procedure Code, S. 47 and O. 21, R. 66—Settling the terms of sale proclamation—Court if bound to decide the question of market value—Order under—Appeal—Notice—Non-service of—Effect.

In execution of a mortgage decree the properties were brought to sale. The lower Court, without itself finding what the market value of the properties was, directed that the values of the properties given by the decree-holder, the judgment-debtor, and the Commissioner who was appointed to report about the value, be all given in the sale proclamation and sale conducted. Against this order an appeal was preferred by the judgment-debtor.

Held (1) that there was no duty upon the Court to decide what exactly the market value of the properties was and insert it in the proclamation and consequently the order which directed the insertion of the three values given by the decree-holder, the judgment-debtor and the Commissioner without giving its own value was not illegal.

C. M. A. No. 345 of 1926 followed.

20 A. 412 (P. C.) distinguished.

(2) that the question was not one relating to the execution, discharge or satisfaction of the decree under S. 47, C P. C., and that therefore no appeal lay.

(3) that the fact that the proclamation was settled without notice to the judgment-debtor was immaterial as notice was originally given to the judgment-debtor and he was *ex parte* then.

K. S. Krishnaswami Aiyangar and *V. N. Venkatavaradachari* for Appellant.

K. V. Krishnaswami Aiyar and *A. V. Visvanatha Sastri* for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
4th November, 1927.

C. R. P. No. 546 of 1925.

Civil Procedure Code, O. 17, Rr. 2 and 3—Party and vakil present—Adjournment refused—Vakil declining to proceed with the suit—Dismissal of suit—If falls under R. 2 or R. 3.

Where, on a date to which a suit had been adjourned for evidence, both the party and his vakil were present and the vakil applied for adjournment and, on the adjournment being refused, did *not* report no instructions but merely declined to proceed with the suit and the suit was dismissed.

Held, that the dismissal should be taken to have been one for default and an application for restoration would lie.

T. M. Krishnaswami Ayyar and *K. S. Desikan* for Petitioner.

The Government Pleader for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ.
4th November, 1927.

C. R. P. No. 852 of 1926.

Civil Procedure Code, S. 115—Order directing payment of deficient Court-fee—Revision.

An order directing the payment of deficient Court-fee in a suit i revisable by the High Court.

48 M. L. J. 688 and 36 I. C. 831 followed.

50 M. L. J. 497 and 102 I. C. 877 not followed.

T. L. Venkatarama Ayyar for Petitioner.

S. T. Srinivasagopalachari for Respondent.

N. S.

Devadoss, J.
7th *November*, 1927.

C. R. P. Nos. 1517 to 1519 of 1927.

Consolidation—Jurisdiction of High Court to consolidate Civil Revision Petitions—Effect on process fees.

The High Court has got jurisdiction to consolidate Appeals and Civil Revision Petitions relating to the same subject-matter.

The effect of consolidation is to treat all the cases as a single one and consequently the process fee must be calculated on the basis of a single case instead of a batch of several cases.

26 C. 214 distinguished.

T. M. Krishnaswami Ayyar for Petitioner.

T. A. Anantha Ayyar (*amicus curiae*) for the Office.

The Government Pleader for the Government.

N. S.

Ramesam and Jackson, JJ.
7th November, 1927.

C. R. P. No. 1284 of 1925.

Indian Contract Act, S. 61—Two debts, one for credit and another for cash, contracted on the same day—Mode of appropriation.

N. R. C.

When two debts, one for cash and another for credit, are contracted on the same day, and subsequently payment is made by the debtor and neither party made any appropriation.

Held, that the debt for cash was the earliest as it became due earlier than the other and it should be discharged first, and the debts are not of equal standing simply because they were contracted on the same date.

V. Rajagopala Ayyar for Petitioner.

K. Narasimha Ayyar for Respondent.

N. S.

Kumaraswami Sastri and Wallace, JJ. *7th November, 1927.* — C. R. P. No. 1216 of 1925.

Civil Procedure Code, O. 22, Rr. 3, 4 and 10—Mortgage suit—Death of decree-holder after preliminary and before final decree—Legal representatives not coming on record in time—Abatement.

In a mortgage suit the mortgagee decree-holder died after the date of the preliminary decree but before the period fixed for payment had expired. Nearly three years thereafter certain persons claiming to be the legatees under a will left by the deceased applied to be added as his legal representatives. The question arose whether the suit had abated in the meanwhile. Their Lordships referred the following question for the decision of a Full Bench: "Whether O. 22, Rr. 3 and 4 of the C. P. C. apply to the case of death of a party after the passing of a preliminary decree in the suit.

B. V. Viswanatha Ayyar for *N. Swaminathan* for Petitioner.

C. S. Venkatachariar for *P. N. Appuswami* for Respondents.

N. S.

Wallace and Srinivasa Ayyangar, JJ. *8th November, 1927.* — S. A. No. 236 of 1925.

Hindu Law—Marriage—Approved or unapproved form—Payment of parisam.

Where a sum of 5 pagodas was paid as *parisam* to the father of the bride and a sum of Rs. 40 was paid in addition for marriage expenses, the marriage is in an unapproved form and not an approved form.

32 M. 512, 13 L. W. 582 and 49 M. L. J. 554 referred to.

T. M. Krishnaswami Ayyar for Appellant.

A. Sundaram for Respondent.

N. S.

The Chief Justice and Ananthakrishna Ayyar, J. *9th November, 1927.* — C. C. C. A. No. 19 of 1926.

Deed—Construction—License or lease—Contract—Party in default—Right to damages.

Where a document does not give exclusive possession of the property comprised in it but merely marks the trees in the property for tapping, and also provides expressly that the executant or his agents

should not be prevented from entering into the property, it does not amount to a lease.

48 M. 368 F. B. referred to.

In the case of a contract, the party who has himself committed default is not entitled to recover damages from the other.

T. S. Rajagopala Ayyar for Appellant.

G. Ramakrishna Ayyar for Respondent.

N. S.

Devadoss, J.
9th November, 1927. } C. R. P. No. 542 of 1926.

Madras District Municipalities Act, S. 354 and Sch. V (2)—Machinery—Handlooms—Jurisdiction of Civil Court to interfere with assessment under the Act.

Handlooms and similar industrial implements are not "machinery" within the meaning of Sch. V (2) of the Madras District Municipalities Act.

Where license fee was levied by the Municipal Council in respect of handlooms, the Civil Court has jurisdiction to entertain a suit for the recovery of the license fee paid.

N. Govindan for Petitioner.

M. C. Stridharan for Respondent.

N. S.

Ramesam and Jackson, JJ.
9th November, 1927. } C. M. S. A. No. 122 of 1926. and C. R. P. No. 417 of 1927.

Civil Procedure Code, S. 145 and O. 21, R. 43—Bond for production of goods attached before judgment—Subsequent attachment and sale in another suit—Non-production of goods by the surety—Forfeiture—If illegal.

A surety for the production of goods attached before judgment in one suit cannot be proceeded against in execution of a decree in another suit. The forfeiture of the bond for non-production of goods by the surety in a subsequent suit is illegal.

K. S. Ramabhadra Ayyar for the Appellant.

V. Rajagopala Ayyar for the Respondent.

N. S.

The Chief Justice and
Ananthakrishna Ayyar, J.
10th November, 1927. } C. C. C. A. No. 38 of 1926.

City Municipal Act of 1919, S. 100—Lease by owner—Substantial constructions by the lessee—Owner if liable to pay property-tax in respect of the constructions.

Where the owner leased the properties and the lease-deed provided that the lessee can make constructions upon the property leased but the lessee would not be entitled to remove anything permanently attached to the ground, and the lessee erected substantial buildings on the property.

Held, that the lessor was the " owner " of the substantial structures erected by the lessee within the meaning of S. 100 of the City Municipal Act and as such liable to the property-tax.

K. S. Krishnaswami Ayyangar for Appellant.

S. Rangaswami Ayyangar for Corporation and *T. G. Raghava ohari* for Landlord.

N. S.

Devadoss, J.

10th November, 1927. — Crl. Rev. C. No. 490 of 1927.

Madras District Municipalities Act, Ss. 195, 204 and 321 (7)—License for construction of pandal—Period fixed in license—Pandal kept on, without renewing license, after the expiration of the period—Licensee if liable to conviction.

A person was granted a license for a fixed period to erect a pandal with inflammable materials by the Municipality. He erected the pandal and kept it on after the expiry of the period without getting the license renewed.

Held, that S 195 of the District Municipalities Act applied only to the case of constructing or re-constructing a pandal and there was no provision in the Act which compelled a person to take out a license for keeping a pandal already erected in pursuance of a license.

C. Narasmihachari and *M. B. Rajagopalachari* for Petitioner.

R. N. Aingar and *T. S. Krishnaswami* for Respondent.

N. S.

Wallace and Srinivasa Ayyangar, JJ.

10th November, 1927. — S. A. No. 129 of 1925.

Hindu Law—Partition—Relinquishment of right to partition—Written instrument if necessary.

Partition does not amount to conveyance and therefore does not require a written instrument for its validity. Similarly, the relinquishment of right to partition can be done orally and no written instrument is necessary for its validity.

S. Muthia Mudaliar for Appellant.

T. M. Krishnaswami Ayyar for Respondent.

N. S.

Beasley, J.
27th October, 1927. } C. S. No. 425 of 1925.

Transfer of Property Act, S. 6—Portion of debt to come into existence in future—If can be assigned.

There cannot be a valid assignment of a debt unless it is payable in present, contingent or in future ; a debt which is to come into existence in future cannot be validly assigned.

The assignment of a portion of a debt is not valid in law.

M. S. Venkatrama Aiyar for Plaintiff.

K. S. Krishnaswami Aiyangar for Defendant.

N. S.

Beasley, J.
14th November, 1927. } C. S. No. 257 of 1926.

Madras District Municipalities Act, Ss. 92 and 350—Company employing agent at a place for the purpose of purchase of goods—Purchase concluded at another place—Effect—Payment of tax under protest—Suit for refund—Maintainability.

The Bombay Company which was situated at Madras employed an agent at Dindigul whose business was to purchase produce for the Company under their instructions. The Company were also the managing agents of the Tinnevelly Cotton Press Co. which had ginning plant in Dindigul and in respect of this the Bombay Company were entitled to certain profits which were received in Madras. The establishment and other charges at Dindigul were first paid by the Bombay Co. and then debited against the Tinnevelly Cotton Press Co. The Municipality of Dindigul levied Company tax on the Bombay Co. The Company paid it under protest and brought a suit for refund of the amount.

Held, that the Company cannot be said to carry on business in Dindigul, as it merely employed the agent for the purpose of purchases of goods which were concluded only in Madras and as all the profit earning transactions in respect of the Tinnevelly Cotton Press Co. were concluded only in Madras.

1896 A. C. 325 referred to.

Held also, that the suit was not barred by S. 350 of the Act, as it cannot be said that the Municipality complied with the provisions of the Act in substance and in effect.

Vere Mockett for Plaintiff.

R. Sethurama Sastri and *P. Veeraraghavan* for Defendant.

N. S.

Phillips and Madhavan Nair, JJ.
15th November, 1927. } Cr. R. C. No. 1014 of 1927.

Criminal Procedure Code, S. 202—Enquiry under—Issue of notice to the accused—When justifiable.

The practice of magistrates issuing notices to the accused persons in the course of enquiries under S. 202, Crl. P. C., is unwarranted by the

N. R. C.

provisions of the Code and an accused person ought not to be compelled to attend the court until a *prima facie* case is made out against him.

49 Mad. 918 : 51 M. L. J. 605 (F. B.) followed.

K. S. Jayarama Aiyar and *V. Pattabhirama Sastri* for accused.

V. L. Ethiraj for Complainant.

The Public Prosecutor for the Crown.

N. S.

Ananthakrishna Ayyar, J.
15th November, 1927. } C. R. P. No. 980 of 1926.

Civil Procedure Code, O. 22—Suit against dead person—Legal representative, if can be impleaded.

A suit against a dead man is no suit at all and consequently his legal representatives cannot be brougt on record in that suit.

49 M. L. J. 590 dist.

A. Ganesa Aiyar for Petitioner.

S. Panchapagesa Sastri for Respondent.

N. S.

Madhavan Nair, J.
15th November, 1927. } C. R. P. No. 1132 of 1926.

Pleader—Right to sue for commission fees.

A suit by a vakil, who was appointed a commissioner in a suit to value improvements, to recover commission fees is maintainable, if there was an express or implied agreement to pay the same.

10 M. L. J. 241 followed.

N. R. Sesha Aiyar for Petitioner,

K. P. Ramakrishna Aiyar for Respondent.

N. S.

Kumaraswami Sastri and Devadoss, JJ.
16th November, 1927. } S. A. No. 298 of 1925.

Civil Procedure Code, O. 21, Rr. 58 to 63—Rent decree—Attachment—Mortgage claim by plaintiff—Mortgage not denied by decree-holder but only priority disputed—Claim dismissed as too late—Suit on mortgage by plaintiff more than one year after the date of the claim order.

The defendant attached the properties in execution of a rent decree passed under the Madras Estates Land Act. The plaintiff who had a mortgage on the properties put in a claim petition. The defendant did not dispute the mortgage but only contested the right of priority of the plaintiff's mortgage over the charge for arrears of rent due to him from the mortgagor for which the decree was passed. The claim petition was dismissed as being too late.

Held, that though no attachment was in law necessary to bring the properties to sale in execution of the rent decree, still, as attachment was actually made and a claim petition was put in, the order on the claim petition was conclusive as to the rights put forward therein

unless a suit was instituted within one year to set aside the order, but, as in this case, the plaintiff's mortgage was not denied but only his right of priority contested, the effect of the order was not to wipe off the mortgage in favour of the plaintiff but only to postpone it to the charge for rent in defendant's favour.

17 M. 17 and 45 M. 90 referred to.

V. Govindarajachari for Appellant.

B. Satyanarayana for Respondent.

N. S.

Phillips and Ramesam, JJ.
16th November, 1927. } C. R. P. No. 607 of 1927.

Limitation Act, Art. 174—"Duly served"—Substituted service—Effect—Civil Procedure Code, O. 5, R. 20.

Substituted service, properly effected, is as effectual as if it has been made on the defendant personally and consequently limitation for an application to set aside the exparte decree where the defendant was served by substituted service commences from the date of such service.

52 M. L. J. 477 and 52 M. L. J. 512 followed.

Recent Judgment of Srinivasa Aiyangar, J., to the contrary in C. R. P. No. 375 of 1927 (not yet reported) not followed.

N. S. Srinivasa Aiyar for *T. L. Venkatarama Aiyar* for Petitioner.

K. G. Srinivasa Aiyar for Respondent.

N. S.

Kumaraswami Sastri and Devadoss, JJ.
16th November, 1927. } C. M. P. Nos. 4249 and 4250 of 1926.

Civil Procedure Code, S. 92—Appeal against scheme decree—Appellants fraudulently withdrawing appeal—Right of other worshippers to continue appeal or file fresh appeal—Limitation Act, S. 5—Excusing delay.

Where in a suit under S. 92, C. P. C., the plaintiffs preferred an appeal against the scheme decree passed by the trial court but subsequently withdrew the appeal with a dishonest motive, and certain other worshippers applied to the High Court to be added as parties to the original appeal and in the alternative for the admission of a fresh appeal preferred by them, at the same time excusing the delay in filing the fresh appeal.

Held, (1) that the scheme suit being a representative suit the worshippers were constructively parties to the appeal and that they could be added as parties to the original appeal without any question of limitation or excusing delay being gone into;

(2) that assuming it was a fresh appeal filed out of time it was a proper case for excusing the delay.

31 M. 236 : 18 M. L. J. 387 (P.C.) relied on.

K. V. Krishnaswami Aiyar, K. S. Sankara Aiyar and *B. V. Viswanatha Aiyar* for Petitioners.

T. R. Ramachandra Aiyar, P. R. Ganapathi Aiyar and *V. Ganapathi* for Respondents.

N. S.

Waller, J.
16th November, 1927.

In the matter of Pachayappah's Charties.

Civil Procedure Code, S. 92—Application to direct the trustees of an educational institution to admit the depressed classes into the institution—Maintainability—Depressed classes, whether Hindus.

An application to Court to direct the trustees of an educational institutiou to admit the depressed classes into the institution is not maintainable, as such a direction is one for the proper administration of the trust falling within S. 92 (*h*), C. P. C., and can only be obtained in a properly framed suit as contemplated by S. 92.

3 R. 582 referred to.

The general relief in cl. (*h*) of S. 92 is not *ejusdem generis* with the reliefs mentioned in clauses (*a*) to (*g*).

P. Venkatramana Rao for the Appellant.

B. Satyanarayana for Trustees.

N. S.

Phillips and Madhavan Nair, JJ.
18th November, 1927.

C. M. A. No. 406 of 1926.

Civil Procedure Code, S. 11—Execution proceedings—Third person intervening with title before sale proclamation—Court proceeding with sale without deciding question of title—Right of the third person to prefer claim when he is sought to be dispossessed by the purchaser in the sale.

Before the properties were brought to sale in execution of a decree, a third person intervened on the ground that the properties belonged to him. But the Court without deciding the question of title proceeded with the sale. Subsequently when the purchaser in the sale went to take delivery of possession, the same person obstructed. The decree-holder purchaser contended that the obstructor was precluded from raising the question by a prior order.

Held, that there was no adjudication as to title and consequently the objector was not precluded from raising the question at a later stage.

18 L. W. 752 referred to. 49 M. L. J. 401 distinguished.

K. S. Venkatarama Aiyar for the Appellant.

P. J. Kuppanna Rao for the Respondent.

N. S.

Wallace and Srinivasa Ayyangar, JJ.
18th November, 1927.
S. A. No. 442 of 1925.

Madras Estates Land Act, S. 195—Notice of attachment of holding by landlord—Suit by tenant objecting to the attachment on the ground that arrears of rent claimed were excessive—Admitted amount not paid into court—Effect.

A landlord took proceedings for recovery of arrears of rent by attachment and sale of the holding of the ryot. The ryot instituted a suit under S. 112 of the Madras Estates Land Act contesting the attachment on the ground that the amount of arrears stated was excessive and that only a smaller amount was due.

Held, that S. 195 of the Act barred the hearing of the suit unless the tenant paid the admitted amount into Court.

N. Sivaramakrishna Aiyar for Appellant.

Respondent unrepresented.

N. S.

Wallace and Srinivasa Ayyangar, JJ.
21st November, 1927.
S. A. No. 58 of 1925.

Injunction — Wrongful obtaining of order of—Suit for damages—When maintainable.

A suit for damages for the wrongful obtaining of an order of injunction does not lie unless it is shown that the order was obtained maliciously or without reasonable or probable cause.

35 M. 598 : 21 M. L. J. 1052 followed.

31 C. L. J. 495 not followed.

T. L. Venkatrama Aiyar for Appellant.

A. V. Narayanaswami Aiyar for Respondent.

N. S.

Devadoss, J.
21st November, 1927.
C. R. P. No. 363 of 1927.

Criminal Procedure Code, S. 476—Court acting under—Power to take additional evidence in appeal.

A Court of appeal acting under S. 476 of the Crl. P. Code has no power to take additional evidence.

K. S. Jayarama Aiyar for Petitioner.

M. Patanjali Sastri for Respondent.

N. S.

Devadoss, J.
21st November, 1927.
C. M. P. No. 4396 of 1927.

Indian Succession Act, S. 302—Disputed claims to estate—Jurisdiction of High Court to give directions to executor.

Under S. 302 of the Succession Act, the High Court has got jurisdiction to decide contested questions or disputes as to the rights of the legatees on an application by the executor praying for directions.

N R C

Ch. Raghava Rao for Applicant.

P. Satyanarayana Rao for Respondent.

N. S.

Beasley, J. *22nd November*, 1927.	C. S. No. 57 of 1927.

Contract—Hiring or sale—Distinction between.

In tbe case of a hire purchase agreement, if the hirer has an option to return the thing at any time during the currency of the hire and to be relieved from the obligation of paying further instalments, it amounts to hiring ; else it is a sale.

C. Narasimhachari for Plaintiff.

V. S. Venkataraman for Defendant.

N. S.

Ramesam and Jackson, JJ. *22nd November*, 1927.	C. M. A. No. 223 of 1927.

Arbitration—Reference outside Court—Subsequent filing of suit by one of the parties—Suit not stayed—Jurisdiction of arbitrators to pass award.

Where one of the parties to a reference to arbitration outside court subsequently files a suit in respect of the subject-matter of the arbitration and the suit is not stayed by order of Court, the arbitrators become *functus officio* and have no jurisdiction to go on with arbitration proceedings.

(1912) 3 K. B. 257 and 41 M. 115 : 33 M. L. J. 177 followed.

T. R. Ramachandra Aiyar and *S. Muthia Mudaliar* for Appellant.

T. M. Krishnaswami Aiyar and *M. Krishna Bharati* for Respondent.

N. S.

Wallace and Srinivasa Ayyangar, JJ. *22nd November*, 1927.	S. A. No. 160 of 1925.

Madras Estates Land Act, S. 147—Suit for enhancement of rent—Transferee from the registered pattadhar not made a party —If bound by the decision.

The decision in a suit brought by the landlord against a registered pattadhar for enhancement of rent is binding upon the transferee from the pattadhar even though he was not made a party to the suit.

M. Patanjali Sastri for Appellant.

B. Somayya for Respondent.

N. S.

Phillips and Madhavan Nair, JJ. *22nd November*, 1927.	Reference No. 8 of 1927.

Criminal Procedure Code, S. 307—Sessions Judge disagreeing with jury—Reference to High Court—Powers of the High Court.

The following question was referred to the opinion of a Full Bench :—

" In the case of a reference to the High Court by a Sessions Judge disagreeing with the verdict of the jury, whether the High Court could interfere with the verdict of jury only in cases in which it is manifestly perverse or whether the High Court can go into the whole evidence and decide the case irrespective of the verdict.

The Public Prosecutor for the Crown.

K. Kuttikrishna Menon for the Accused.

N. S.

Phillips and Madhavan Nair, JJ.
24th November, 1927. } C. M. A. No. 134 of 1927.

Compromise decree—Construction—Preliminary or final.

In a partition suit a compromise decree was passed which provided that the plaintiff was to get ⅙th share of certain properties and that an arbitrator was to be appointed to divide the properties into three shares and one-half of one of these shares should be given to the plaintiff. There was also a further provision that in default of such division by the arbitrator, the plaintiff was entitled to get the properties divided through Court.

Held, that this decree was a final decree and consequently executable, even though no prior preliminary decree had been passed.

31 M. 540 and 35 M. 26 referred to. 32 C. 483 dissented from.

C. S. Venkatachariar for Appellant.

T. M. Krishnaswami Aiyar for Respondent.

N. S.

Phillips and Madhavan Nair, JJ.
25th November, 1927. } S. A. No. 399 of 1925.

Civil Procedure Code, S. 100—*Question of fact—Question whether a statement in a previous deposition amounts to an acknowledgment of subsisting liability—Limitation Act*, S. 19—*Implied acknowledgment—Statement that a certain amount was due on a prior date.*

The question as to whether a statement in a previous deposition of the defendant that, on a prior date, about Rs. 100 or 200 were due on the pronote, is one of a subsisting liability on the date of the deposition is one of fact and the High Court will not interfere in second appeal with the findings of the lower courts on the point.

The question whether the statement that a certain amount was due on a prior date without anything more as to whether it was subsequently discharged by payment or not, amounts to an acknowledgment of subsisting liability on the date of the statement, depends on the facts and circumstances of each case.

45 M. 443 : 42 M. L. J. 268 and 46 M. L. J. 1 referred to.

When once a statement is held to be an acknowledgment, it is open to the Court to find that the statements of discharge of portion of

the debt by the defendant are false, as the suit is not based on the acknowledgment but on the original cause of action.

T. V. Venkatrama Aiyar and *T. V. Ramanatha Aiyar* for Appellant.

K. V. Krishnaswami Aiyar for Respondent.

N. S.

Phillips and Madhavan Nair, JJ. *28th November*, 1927.	C. M. S. A. No. 133 of 1925.

Civil Procedure Code, S. 11—Ex-parte order allowing arrest—Judgment debtor adjudicated insolvent on the date of the order—Subsequent application for arrest—Judgment-debtor if precluded from raising the question of exemption from arrest.

In an execution of a decree an order for arrest was made against the judgment-debtor although he had been adjudicated insolvent on that date under the Provincial Insolvency Act of 1907, the judgment-debtor not appearing and pleading exemption from arrest. In a later execution application praying for arrest of the judgment-debtor, the judgment-debtor pleaded exemption from liability consequent on the order of adjudication.

Held, that the fact that the judgment-debtor did not appear and plead the exemption in the former execution petition did not preclude him from raising it now, as the question was purely one of law.

K. V. Krishnaswami Aiyar for Appellant.

C. Krishnamachariar for Respondent.

N. S.

Phillips and Madhavan Nair, JJ. *29th November*, 1927.	Crl. R. C. No. 784 of 1927.

Madras Local Boards Act, S. 221—Erection of pandal without license—Imposition of penalty by Union Board—Application by Union Board to recover penalty—Plea that no fee was payable—Jurisdiction of Magistrate to enquire into.

A person erected a pandal without the permission of the Union Board. The Board without prosecuting him for not taking a license agreed to license the pandal on payment of a fee and applied to the Sub-Magistrate to collect the same under section 221. The accused raised the plea that no fee was payable, as he had not erected the pandal in contravention of S. 163. The Sub-Magistrate declined to decide this point on the ground that it was not open to him to entertain such a plea.

Held, (on a reference by the District Magistrate) that it was not open to the Sub-Magistrate to refuse to entertain the plea and that he had jurisdiction to decide about it.

Held also, that as there had been no license, the license-fee payable under the Act could not be said to be due within section 221 and consequently the application by the Union Board was not maintainable.

The Public Prosecutor for the Crown.

N. S.

Phillips and Madhavan Nair, JJ.
29th November, 1927.

Crl. R. C. No. 633 of 1927.

Criminal Procedure Code, Ss. 237 and 423—Conviction for an offence under S. 147, Indian Penal Code—Appeal—Appellate Court altering conviction into one under section 323—Legality.

The accused were charged with rioting under S. 147, I. P. C., and convicted by the Sub-Magistrate. On appeal, the appellate Magistrate held that the rioting was not proved but convicted some of them for the offence of hurt under S. 323, I. P. C.

Held, (on revision) that the conviction by the appellate Court was legal, although there was no charge for the offence under S. 323, as the case for the prosecution included the incidents upon which the accused were convicted for hurt.

41 I. C. 828 not followed. 52 I.A. 191 : 6 L. 226 : 48 M.L.J. 643 (P.C.) referred to.

T. Venkataramana Rao for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Devadoss, J.
30th November, 1927.

Crl. R. C. No. 660 of 1927.

Criminal Procedure Code, Ss. 264, 423—Conviction on summary trial—Appeal—Power of Appellate Court to look into complaint and sworn statement.

In an appeal from a conviction in a case tried by a magistrate summarily, the appellate Court has no jurisdiction to look into the complaint and the sworn statement, as they do not form part of the record under section 264.

53 C. 738 referred to.

C. Narasimhachari for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Phillips and Ramesam, JJ.
30th November, 1927.

A. S. Nos. 122 and 463 of 1925.

Civil Procedure Code, O. 1, R. 8—Suit by worshippers for declaration that an alienation of trust properties is not binding on the temple and for possession to be delivered to the trustee—Trustee denying that temple was public—Maintainability of suit—Civil Procedure Code, S. 92—Necessity of sanction under, for such a suit—Act XX of 1863, S. 14—Suit by worshippers for removal of trustees—Decision in, if binding in subsequent suit by other worshippers under O. 1, R. 8, Civil Procedure Code, for declaration that temple is public—Civil Procedure Code, S. 11—Documents not filed in suit—Effect on judgment and decree—Limitation Act, Arts. 134 and 144—Permanent lease of temple property—Adverse possession of lessee.

Where the plaintiffs as worshippers of the temple filed a suit under O. 1, R. 8, C. P. C., with permission of the court for declaration that

certain properties are trust properties belonging to the temple and that a permanent lease and a mortgage of the said properties were invalid and not binding on the temple, and for possession of the trust properties to be delivered to the first defendant, the trustee of the temple, and the trustee set up in his written statement the plea that the temple and its endowments were his private property and that the permanent lease and mortgage of the endowments were therefore valid and binding on the temple.

Held (1) that the suit was not maintainable as it was so framed only with a view to evade the provisions of S. 92, C. P. C.,

(2) that a properly constituted suit under S. 92, C. P. C., should have been brought to remove the trustee and to frame a scheme.

40 M. 212 : 31 M. L. 777 (F.B.) and 41 M. 124 : 33 M. L. J. 357 distinguished.

The decision in a previous suit filed by certain worshippers under S. 14 of Act XX of 1863 for removal of trustee is *res judicata* in a later suit by certain other worshippers under O. 1, R. 8, C. P. C., for declaration that certain temple endowments were public property.

The mere fact that in the previous suit the plaintiffs failed to file into Court certain documents does not amount to gross negligence so as to vitiate the judgment and decree passed in that suit.

13 M. L J, 68 followed.

A permanent lease of temple property which was upheld in a prior suit and under which the lessee in possession asserted a hostile title to the temple for a long time up to the date of the present suit, confers absolute title by adverse possession on the lessee so as to make the present suit barred by limitation either under Art. 134 or Art. 144 of the Limitation Act.

The theory of each successive trustee getting a fresh cause of action at the date of his accession to office as laid down in 48 I.A. 302 : 44 M. 831 : 41 M.L.J. 346 (P.C.) has no application to the case of temples (as the present) as the trustee of a temple, unlike the head of a mutt, has no beneficial interest in the endowment of the temple.

S. Varadachari, *V. Krishna Mohan* and *M. Ramachandra Rao* for Appellants in A. S. 122 of 1925.

The Advocate-General and *V. Suryanarayana* for Appellants in A. S. 463 of 1925.

A. Krishnaswami Aiyar, *Ch. Raghava Rao* and *A. Venkatachellam* for Respondents in both.

N. S.

Beasley, J.

30th November, 1927.

C. S. No. 259 of 1927.

Indian Succession Act, Ss. 3& 4—Provident Fund—Preferentia right of the widow and the children of a subscriber over other persons nominated by the subscriber during his life-time.

Where there are widow and children left by the deceased subscriber to a provident fund, they are entitled to the benefit of the Fund whatever be the amount subscribed for, regardless of the nominations or assignments made by the subscriber.

K. Bashyam Aiyangar for Plaintiffs.

Pinto for 2nd Defendant.

King and *Partridge* for the Railway Company.

N. S.

Ananthakrishna Ayyar, J.
1st December, 1927. — C. R. P. No. 1072 of 1926.

Negotiable Instruments Act, S. 27—Promissory note by a partner—Amount advanced for the partnership business—Suit on pro-note—Personal decree against the other partner—Legality.

In a suit on a promissory note executed by one of the partners, the amount advanced having been utilised for the partnership business, it is not illegal for the Court to give a personal decree against the other partner who did not join in the execution of the note.

S. R. Muthusami Aiyar for Petitioner.

K. G. Srinivasa Aiyar for Respondent.

N. S.

Kumaraswami Sastri and Reilly, JJ.
1st December, 1927. — A. S. No. 288 of 1923.

Limitation Act, S. 7—Alienation by Hindu Father—Eldest son not instituting suit to set aside alienation within three years of attaining majority—Suit by younger sons within three years of their attaining majority—If barred.

A suit by the younger son of a Hindu Father for partition of the joint family properties after setting aside the alienations made by the father within three years of the attainment of the majority of the younger son is not barred by limitation, although the eldest son who is impleaded as the defendant in the suit did not institute within three years of his attaining majority a suit impeaching the alienations.

38 M. 118 : 25 M. L. J. 405 not followed. 31 A. 156 followed. 51 M. L. J. 845 referred to.

P. R. Srinivasan for Appellants.

K. Bashyam Aiyangar, K. S. Champakesa Aiyangar, R. Gopalasami Aiyangar and *V. Sundaresa Aiyar* for Respondents.

N. S.

Madhavan Nair and Reilly, JJ.
1st December, 1927. — C. M. A. No. 438 of 1926.

Criminal Procedure Code, S. 476—Order of District Munsiff refusing to make a complaint—Appeal to District Court—Order of District Court reversing the order of the Munsiff—Appeal to High Court—Maintainability.

A District Munsiff refused to make a complaint in respect of an offence made in the course of a judicial proceeding before him. On appeal, the District Court reversed the order of the Munsiff and directed the making of a complaint—Against this erder an appeal was filed to the High Court.

Held, that the appeal was not maintainable and that the fact that the order of the District Court was a reversing one was immaterial.

K. P. M. Menon for Appellant.

M. C. Sridhan for Respondent.

N. S.

Phillips, J.

2nd December, 1927.

C. R P. Nos 617 to 619 of 1926.

District Municipalities Act, Ss. 78, 80 and 354—Levy of profession tax without complying with the provisions of Ss. 78 and 80—Civil suit—Maintainability.

Where a Municipal Council levied profession tax under a resolution passed by it which did not specify the rate or the date of its coming into force and three years later the Council issued a notification that it shall be deemed to have come into force on the date of the resolution.

Held, there was no compliance with the provisions of Ss. 78 and 80, that the subsequent notification with a declaration of retrospective operation was illegal and *ultra vires* and a civil suit for the recovery of the tax levied was not barred and that the assessees were not bound to appeal in the first instance to the Council from the orders of the Chairman.

49 M. L J. 542 and 50 M L. J 556 followed.

A. Satyanarayana for Petitioner.

P. Pamini Rao and *V. Patbhirama Sastri* for Respondents.

N. S.

Ramesam and Jackson, JJ.

6th December, 1927.

C. M. A. No. 290 of 1925.

Limitation Act, Art 182, cl. (5)—Transfer of decree to another Court for execution--Subsequent transfer of territorial jurisdiction—Application made thereafter to the Court which passed the decree—' Step in aid.'

A decree passed by the Sub-Court of Ramnad was transferred for execution to the Sub-Court Madura. Then the properties, subject-matter of the decree, were transferred to the jurisdiction of the newly created Dindigul Court.

Held, an application made thereafter to the Ramnad Court is a step-in-aid of execution and would save limitation.

37 M. 231 : 23 M. L. J 236 and 43 I. A. 238 : 39 M. 640 : 31 M. L. J. 300 (P. C.) explained ; 47 B. 56 dissented from ; 89 I. C. 958 approved of ; 50 B. 439 referred to.

C. S. Venkatachariar for Appellant.

K. Rajah Aiyar and *P. N. Appuswami Aiyar* for Respondent.

N. S

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